141-411

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~324~~ 36

SOPHIE FOWLER AND EDWIN S. FOWLER, APPELLANTS,

vs.

THE EQUITABLE TRUST COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED FEBRUARY 4, 1888.

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1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, before the Hon. Walter Q. Gresham, judge of the seventh judicial circuit, presiding, and Hon. Samuel H. Treat, district judge of said district, associate judge, on Tuesday, the eleventh day of January, at the January term of said court, in the year of our Lord one thousand eight hundred and eighty-seven, and of our Independence the one hundred and eleventh year.

J. A. JONES, *Clerk.*

EQUITABLE TRUST COMPANY
vs.
SOPHIE FOWLER, EDWIN S. FOWLER, HENRY R. BOND, and ROBERT P. JOHNSTON. } In Chancery.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

The Equitable Trust Company, a corporation organized and doing business under and by virtue of the laws of the State of Con-
2 necticut, brings this its bill by W. L. Gross, Esq., its solicitor, against Sophie Fowler, Edwin S. Fowler, Henry R. Bond, and Robert P. Johnston, defendants, at the suit of complainant in the bill aforesaid.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and eighty-two, came the said complainant, by its solicitor, and filed in the clerk's office of said court its bond for costs, bill, and two deeds of trust in the above-entitled cause, which are in the words and figures following, to wit:

Bond for Costs.

Circuit Court United States of America, Southern District of Illinois, *ss.* June Term, A. D. 1882.

EQUITABLE TRUST COMPANY
vs.
SOPHIE FOWLER *et al.* } In Chancery.

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to
3 any of the officers of this court, in pursuance of the laws of this State and of the United States.

WILLIAM L. GROSS.

(Indorsed:) Filed October 27, A. D. 1882. J. A. Jones, clerk.

Bill.

To the judges of the circuit court of the United States for the southern district of Illinois:

The Equitable Trust Company, a corporation organized and doing business under and by virtue of the laws of the State of Connecticut, with its principal place of business in the city of New London, Connecticut, and with a branch office at No. 16 Exchange Place, in the city of New York, a citizen of the State of Connecticut, brings this its bill against Sophie Fowler and Edwin S. Fowler, her husband, citizens of the southern district of Illinois; Henry R. Bond, of New London, a citizen of the State of Connecticut, and Robert P. Johnston, of St. Louis, a citizen of the State of Missouri; and thereupon your orator complains and says that on the first day of February, A. D. 1876, Sophie Fowler and Edwin S. Fowler,
4 being indebted to your orator in the just and full sum of ten thousand dollars for borrowed money, made and delivered to your orator their ten coupon bonds, each for the principal sum of one thousand dollars, of that date, and thereby bound themselves to pay to your orator, at its office, in the city of New York, on the first day of February, A. D. 1881, said principal sum of ten thousand dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of February and of August in each year, according to the tenor and effect of the coupons attached to said writings obligatory, and after the said first day of February, A. D. 1881, to pay to your orator, as interest on said principle sum of ten thousand dollars, interest thereon, at the rate of ten per cent. per annum, until paid.

And which said mortgage bonds are in the words and figures following, to wit:

Mortgage Bonds.

UNITED STATES OF AMERICA.

1000. Number 7233. 1000.

Real-estate mortgage bond.

Negotiated and guaranteed by the Equitable Trust Company of New London, Connecticut.

5 Know all men by these presents, That we, Sophie Fowler and Edwin S. Fowler, of the county of Sangamon, State of Illinois, are justly indebted to the Equitable Trust Company of New London, Connecticut, in the sum of one thousand dollars, lawful money of the United States, which sum we promise to pay to the Equitable Trust Company, or to the registered holder hereof, or, if not registered, to the bearer, on the first day of February, A. D. 1881, together with interest thereon from and after the date hereof, at the rate of seven per cent. per annum, at the office of the Equi-

table Trust Company, in the city of New York, on the first days of Feb'y and August in each year, on presentation and surrender of the annexed interest coupons, as they shall severally become due, as provided herein, and at the rate of ten per cent. thereon after default of payment of the principal hereof.

This bond shall pass by delivery, or by transfer on the books of the company in the city of New York. No transfer, except on the books of the company, shall be valid unless the last transfer shall have been to bearer. This bond shall be subject to registration, or transferable to bearer at the option of any lawful holder
6 thereof. This bond shall not be negotiable until guaranteed by the Equitable Trust Company under its seal. It is hereby expressly agreed, that if default be made in the payment of any one of the installments of interest aforesaid, at the time and place aforesaid, when and where the same shall become due and payable, and such default shall continue for ten days after such installment becomes due and payable as aforesaid, then, and in that event the said principal sum of one thousand dollars, shall, at the election of the legal holder hereof, at once become due and payable, anything hereinbefore contained to the contrary notwithstanding: such election to be made at any time after the expiration of said ten days without notice.

It is further expressly agreed that if at any time until the principal shall be fully paid, the premises made security for this bond, or any portion thereof, shall be sold for any tax or assessment whatsoever, or the undersigned shall fail to keep the said premises insured to the amount of $8,000, and the insurance policies properly assigned to Jonathan Edwards, trustee, then and in that event the said principal sum of one thousand dollars, shall, at the election of the legal holder hereof become due and payable, anything hereinbefore contained to the contrary notwithstanding.

7 In witness whereof, we have hereto affixed our hands and seals, at Springfield, Illinois, this first day of February, A. D. 1876.

SOPHIE FOWLER. [L. S.]
EDWIN S. FOWLER. [L. S.]

For value received, the Equitable Trust Company hereby guarantees the payment of the principal and interest of the above bond, according to the terms thereof.

EQUITABLE TRUST COMPANY,
[L. S.] By JONATHAN EDWARDS, *Pres't.*

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

This bond is one of ten bonds, amounting in the aggregate to ten thousand dollars, given for an actual loan of money made by the

Equitable Trust Company to Sophie and Edwin S. Fowler, and secured by a trust deed from Sophie and Edwin S. Fowler, to Jonathan Edwards, trustee, of New York duly recorded, and conveying property situated in the town of Springfield, county of Sangamon, and State of Illinois, valued at not less than twenty-five thousand dollars ($25,000).

8 UNITED STATES OF AMERICA.

1000. Number 7234. 1000.

Real-estate mortgage bond.

Negotiated and guaranteed by the Equitable Trust Company of New London, Connecticut.

Know all men by these presents: That we, Sophie Fowler and Edwin S. Fowler, of the county of Sangamon, State of Illinois, are justly indebted to the Equitable Trust Company of New London, Connecticut, in the sum of one thousand dollars, lawful money of the United States, which sum we promise to pay to the Equitable Trust Company, or to the registered holder hereof, or, if not registered, to bearer, on the first day of February A. D. 1881, together with interest thereon, from and after the date hereof, at the rate of seven per cent. per annum, at the office of the Equitable Trust Company, in the city of New York, on the first days of August and February, in each year, on presentation and surrender of the annexed interest coupons, as they shall severally become due, as provided herein, and at the rate of ten per cent. thereon, after default of payment of the principal hereof.

9 This bond shall pass by delivery, or by transfer on the books of the company, in the city of New York. No transfer, except on the books of this company shall be valid unless the last transfer shall have been to bearer. This bond shall be subject to registration, or transferable to bearer at the option of any lawful holder thereof. This bond shall not be negotiable until guaranteed by the Equitable Trust Company under its seal. It is hereby expressly agreed, that if default be made in the payment of any one of the installments of interest aforesaid, at the time and place aforesaid, when and where the same shall become due and payable, and such default shall continue for ten days after such installment becomes due and payable as aforesaid, then and in that event the said principal sum of one thousand dollars, shall, at the election of the legal holder hereof, at once become due and payable, anything hereinbefore contained to the contrary notwithstanding: such election to be made at any time after the expiration of said ten days without notice.

It is further expressly agreed that if at any time until the principal shall be fully paid, the premises made security for this bond, or any portion thereof shall be sold for any tax or assessment

10 whatsoever, or the undersigned shall fail to keep the said premises insured to the amount of $8,000, and the insurance policies properly assigned to Jonathan Edwards, trustee, then and in

that event the said principal sum of one thousand dollars, shall, at the election of the legal holder hereof, become due and payable, anything hereinbefore contained to the contrary notwithstanding.

In witness whereof, we have hereto affixed our hands and seals at Springfield, Illinois, this first day of February, A. D. 1876.

SOPHIE FOWLER. [L. S.]
EDWIN S. FOWLER. [L. S.]

For value received the Equitable Trust Company hereby guarantees the payment of the principal and interest of the above bond, according to the terms thereof.

EQUITABLE TRUST COMPANY,
[L. S.] By JONATHAN EDWARDS, *Pres't.*

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

This bond is one of ten bonds, amounting in the aggregate to ten thousand dollars, given for an actual loan of money made by the Equitable Trust Company to Sophie and Edwin S. Fowler, and secured by a trust deed from Sophie and Edwin S. Fowler, to Jonathan Edwards, trustee, of New York, duly recorded, and con-
11 veying property situated in the town of Springfield, county of Sangamon, and State of Illinois, valued at not less than twenty-five thousand (25,000) dollars.

UNITED STATES OF AMERICA.

1000. Number 7235. 1000.

Real-estate mortgage bond.

Negotiated and guaranteed by the Equitable Trust Company of New London, Connecticut.

Know all men by these presents: That we, Sophie Fowler and Edwin S. Fowler of the county of Sangamon, State of Illinois, are justly indebted to the Equitable Trust Company of New London, Connecticut in the sum of one thousand dollars, lawful money of the United States, which sum we promise to pay to the Equitable Trust Company, or to the registered holder hereof, or, if not registered, to the bearer on the first day of February, A. D. 1881, together with interest thereon, from and after the date hereof, at the rate of seven per cent. per annum, at the office of the Equitable Trust Com-
pany in the city of New York, on the first days of August
12 and February in each year, on presentation and surrender of the annexed interest coupons as they shall severally become due, as provided herein, and at the rate of ten per cent. thereon, after default of payment of the principal hereof.

This bond shall pass by delivery, or by transfer on the books of the company in the city of New York. No transfer, except on the books of the company, shall be valid unless the last transfer shall have been to bearer. This bond shall be subject to registration, or transferable to bearer at the option of any lawful holder thereof. This bond shall not be negotiable until guaranteed by the Equitable Trust Company under its seal. It is hereby expressly agreed, that if default be made in the payment of any one of the installments of interest aforesaid at the time and place aforesaid, when and where the same shall become due and payable, and such default shall continue for ten days after such installment becomes due and payable as aforesaid, then and in that event the said principal sum of one thousand dollars, shall, at the election of the legal holder hereof, at once become due and payable, anything hereinbefore contained to the contrary notwithstanding: such election to be made at any time after the expiration of said ten
13 days without notice.

It is further expressly agreed that if at any time until the principal shall be fully paid, the premises made security for this bond, or any portion thereof shall be sold for any tax or assessment whatsoever, or the undersigned shall fail to keep the said premises insured to the amount of $8,000, and the insurance policies properly assigned to Jonathan Edwards, trustee, then and in that case the said principal sum of one thousand dollars, shall, at the election of the legal holder hereof, become due and payable, anything hereinbefore contained to the contrary notwithstanding

In witness whereof, we have affixed our hands and seals at Springfield, Illinois, this first day of February, A. D. 1876.

SOPHIE FOWLER. [L. S.]
EDWIN S. FOWLER. [L. S.]

For value received, the Equitable Trust Company hereby guarantees the payment of the principal and interest of the above bond, according to the terms thereof.

EQUITABLE TRUST COMPANY,
[L. S.] By JONATHAN EDWARDS, *Pres't.*

[Written across the face:] Guarantee of Equitable Trust Company is cancelled.

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

14 This bond is one of ten bonds amounting in the aggregate to ten thousand dollars, given for an actual loan of money made by the Equitable Trust Company to Sophie and Edwin S. Fowler, and secured by a trust deed from Sophie and Edwin S. Fowler, to Jonathan Edwards, trustee, of New York, duly recorded and conveying property situated in the town of Springfield, county of Sangamon, and State of Illinois, valued at not less than twenty-five thousand (25,000) dollars.

UNITED STATES OF AMERICA.

1000. Number 7236. 1000.

Real-estate mortgage bond.

Negotiated and guaranteed by the Equitable Trust Company of New London, Connecticut.

Know all men by these presents: That we, Sophie Fowler and Edwin S. Fowler, of the county of Sangamon, State of Illinois are justly indebted to the Equitable Trust Company of New London, Connecticut, in the sum of one thousand dollars, lawful money of the United States, which sum we promise to pay to the Equita-
15 ble Trust Company, or to the registered holder hereof, or if not registered, to bearer on the first day of February, A. D. 1881, together with interest thereon from and after the date hereof, at the rate of seven per cent. per annum, at the office of the Equitable Trust Company, in the city of New York, on the first days of August and February in each year, on presentation and surrender of the annexed interest coupons, as they shall severally become due, as provided herein, and at the rate of ten per cent. thereon, after default of payment of the principal hereof.

This bond shall pass by delivery, or by transfer on the books of the company in the city of New York. No transfer, except on the books of the company, shall be valid, unless the last transfer shall have been to bearer. This bond shall be subject to registration or transferable to bearer at the option of any lawful holder thereof. This bond shall not be negotiable until guaranteed by the Equitable Trust Company under its seal. It is hereby expressly agreed, that if default be made in the payment of any one of the installments of interest aforesaid, at the time and place aforesaid, when and where the same shall become due and payable, and such default shall continue for ten days after such installment becomes due
16 and payable as aforesaid, then and in that event said principal sum of one thousand dollars, shall, at the election of the legal holder hereof, at once become due and payable, anything hereinbefore contained to the contrary notwithstanding; such election to be made at any time after the expiration of said ten days without notice.

And it is further expressly agreed that if at any time until the principal shall be fully paid, the premises made security for this bond, or any portion thereof, shall be sold for any tax or assessment whatsoever, or the undersigned shall fail to keep the said premises insured to the amount of $8,000, and the insurance policies properly assigned to Jonathan Edwards, trustee, then and in that event the said principal sum of one thousand dollars, shall, at the election of the legal holder hereof, become due and payable, anything hereinbefore contained to the contrary notwithstanding.

In witness whereof, we have hereto affixed our hands and seals at Springfield, Illinois, this first day of February, A. D. 1876.

SOPHIE FOWLER. [L. S.]
EDWIN S. FOWLER. [L. S.]

17 For value received the Equitable Trust Company hereby guarantees the payment of the principal and interest of the above bond according to the terms thereof.

EQUITABLE TRUST COMPANY,
[L. S.] By JONATHAN EDWARDS, *Pres't.*

[Written across the face:] Guarantee of Equitable Trust Company is canceled.
[Written across the face:] Guarantee of Equitable Trust Company is canceled.
[Written across the face:] Guarantee of Equitable Trust Company is canceled.

This bond is one of ten bonds amounting in the aggregate to ten thousand dollars given for an actual loan of money made by the Equitable Trust Company to Sophie and Edwin S. Fowler, and secured by a trust deed from Sophie and Edwin S. Fowler to Jonathan Edwards, trustee of New York, duly recorded and conveying property situated in the town of Springfield, county of Sangamon and State of Illinois, valued at not less than twenty-five thousand (25,000) dollars.

UNITED STATES OF AMERICA.

1000. Number 7237. 1000.

Real-estate mortgage bond.

Negotiated and guaranteed by the Equitable Trust Company of New London, Connecticut.

18 Know all men by these presents: that we Sophie Fowler, and Edwin S. Fowler, of the county of Sangamon, State of Illinois, are justly indebted to the Equitable Trust Company of New London, Connecticut, in the sum of one thousand dollars, lawful money of the United States, which sum we promise to pay to the Equitable Trust Company, or the registered holder hereof, or, if not registered to bearer, on the first day of February A. D. 1881, together with interest thereon, from and after the date hereof, at the rate of seven per cent. per annum, at the office of the Equitable Trust Company, in the city of New York, on the first days of August and February in each year, on presentation and surrender of the annexed interest coupons, as they shall severally become due, as provided herein, and at the rate of ten per cent. thereon, after default of payment of the principal hereof.

This bond shall pass by delivery, or by transfer on the books of the company in the city of New York. No transfer, except on the books of the company, shall be valid unless the last transfer shall have been to bearer. This bond shall be subject to registration or transferable to bearer at the option of any lawful holder thereof.

This bond shall not be negotiable until guaranteed by the
19 Equitable Trust Company under its seal. It is hereby expressly agreed that if default be made in the payment of any

one of the installments of interest aforesaid, at the time and place aforesaid, when and where the same shall become due and payable, and such default shall continue for ten days after such installment becomes due and payable as aforesaid, then and in that event the said principal sum of one thousand dollars, shall, at the election of the legal holder hereof, at once become due and payable, anything hereinbefore contained to the contrary notwithstanding; such election to be made at any time after the expiration of said ten days without notice.

It is further expressly agreed that if at any time until the principal shall be fully paid, the premises made security for this bond, or any portion thereof, shall be sold for any tax or assessment whatsoever, or the undersigned shall fail to keep the said premises insured to the amount of $8,000, and the insurance policies properly assigned to Jonathan Edwards trustee, then and in that event the said principal sum of one thousand dollars, shall at the election of the legal holder hereof become due and payable, anything hereinbefore contained to the contrary notwithstanding.

In witness whereof, we have hereto affixed our hands and seals at Springfield, Illinois, this first day of February, A. D. 1876.

SOPHIE FOWLER. [L. S.]
EDWIN S. FOWLER. [L. S.]

For value received, the Equitable Trust Company hereby guarantees the payment of the principal and interest of the above bond according to the terms thereof.

EQUITABLE TRUST COMPANY,
[L. S.] By JONATHAN EDWARDS, *Pres't.*

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

[Written across the face:] Guarantee of Equitable Trust Company is cancelled.

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

This bond is one of ten bonds, amounting in the aggregate to ten thousand dollars, given for an actual loan of money made by the Equitable Trust Company to Sophie and Edwin S. Fowler, and secured by a trust deed from Sophie and Edwin S. Fowler, to Jonathan Edwards, trustee, of New York, duly recorded and conveying property situated in the town of Springfield, county of Sangamon and State of Illinois, valued at not less than twenty-five thousand (25,000) dollars.

21 UNITED STATES OF AMERICA.

1000. Number 7238. 1000.

Real-estate mortgage bond.

Negotiated and guaranteed by the Equitable Trust Company of New London, Connecticut.

Know all men by these presents: That we, Sophie Fowler and Edwin S. Fowler, of the county of Sangamon, State of Illinois, are justly indebted to the Equitable Trust Company of New London, Connecticut in the sum of one thousand dollars, lawful money of the United States, which sum we promise to pay to the Equitable Trust Company, or to the registered holder hereof, or if not registered, to bearer on the first day of February A. D. 1881, together with interest thereon, from and after the date hereof, at the rate of seven per cent. per annum, at the office of the Equitable Trust Company, in the city of New York, on the first days of August and February in each year, on presentation and surrender of the annexed interest coupons as they shall severally become due, as provided herein, and at the rate of ten per cent. thereon, after default of payment of the principal hereof.

22 This bond shall pass by delivery or by transfer on the books of the company in the city of New York. No transfer, except on the books of the company, shall be valid, unless the last transfer shall have been to bearer.

This bond shall be subject to registration or transferable to bearer at the option of any lawful holder thereof. This bond shall not be negotiable until guaranteed by the Equitable Trust Company under its seal.

It is hereby expressly agreed that if default be made in the payment of any one of the installments of interest aforesaid, at the time and place aforesaid, when and where the same shall become due and payable, and such default shall continue for ten days after such installment becomes due and payable as aforesaid, then, and in that event the said principal sum of one thousand dollars shall, at the election of the legal holder hereof at once become due and payable, anything hereinbefore contained to the contrary notwithstanding, such election to be made at any time after the expiration of said ten days without notice.

It is further expressly agreed that if at any time until the principal shall be fully paid, the premises made security for this

23 bond, or any portion thereof, shall be sold for any tax or assessment whatsoever, or the undersigned shall fail to keep the said premises insured to the amount of $8,000, and the insurance policies properly assigned to Jonathan Edwards, trustee, then and in that event the said principal sum of one thousand dollars, shall at the election of the legal holder hereof become due and payable, anything hereinbefore contained to the contrary notwithstanding.

In witness whereof, we have hereto affixed our hands and seals at Springfield Illinois this first day of February A. D. 1876.

SOPHIE FOWLER. [L. S.]
EDWIN S. FOWLER. [L. S.]

For value received the Equitable Trust Company hereby guarantees the payment of the principal and interest of the above bond according to the terms thereof.

EQUITABLE TRUST COMPANY,
[L. S.] By JONATHAN EDWARDS, *Pres't.*

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

This bond is one of ten bonds amounting in the aggregate to ten thousand dollars, given for an actual loan of money made by the Equitable Trust Company to Sophie and Edwin S. Fowler, and
24 secured by a trust deed from Sophie and Edwin S. Fowler to Jonathan Edwards, trustee, of New York, duly recorded, and conveying property situated in the town of Springfield, county of Sangamon and State of Illinois, valued at not less than twenty-five thousand (25,000) dollars.

UNITED STATES OF AMERICA.

1000. Number 7239. 1000.

Real-estate mortgage bond.

Negotiated and guaranteed by the Equitable Trust Company of New London, Connecticut.

Know all men by these presents: That we, Sophie Fowler and Edwin S. Fowler, of the county of Sangamon, State of Illinois, are justly indebted to the Equitable Trust Company of New London, Connecticut, in the sum of one thousand dollars, lawful money of the United States, which sum we promise to pay to the Equitable Trust Company, or to the registered holder hereof, or, if not registered to bearer, on the first day of February A. D. 1881, together with interest thereon, from and after the date hereof, at the
25 rate of seven per cent. per annum, at the office of the Equitable Trust Company, in the city of New York, on the first days of August and February in each year, on presentation and surrender of the annexed interest coupons as they shall severally become due, as provided herein, and at the rate of ten per cent. thereon after default of payment of the principal hereof.

This bond shall pass by delivery or by transfer on the books of the company in the city of New York. No transfer, except on the books of the company, shall be valid unless the last transfer shall have been to bearer. This bond shall be subject to registration or transferable to bearer at the option of any lawful holder thereof. This bond shall not be negotiable until guaranteed by the Equitable Trust Company under its seal. It is hereby expressly agreed, that if default be made in the payment of any one of the install-

ments of interest aforesaid, at the time and place aforesaid, when and where the same shall become due and payable, and such default shall continue for ten days after such installment becomes due and payable as aforesaid, then and in that event the said principal sum of one thousand dollars, shall, at the election of the legal
26 holder hereof, at once become due and payable anything hereinbefore contained to the contrary notwithstanding; such election to be made at any time after the expiration of said ten days without notice.

It is further expressly agreed that if at any time until the principal shall be fully paid, the premises made security for this bond or any portion thereof shall be sold for any tax or assessment whatsoever, or the undersigned shall fail to keep the said premises insured to the amount of $8,000, and the insurance policies properly assigned to Jonathan Edwards, trustee, then and in that event the said principal sum of one thousand dollars, shall, at the election of the legal holder hereof, become due and payable, anything hereinbefore contained to the contrary notwithstanding.

In witness whereof, we have hereto affixed our hands and seals at Springfield, Illinois, this first day of February A. D. 1876.

SOPHIE FOWLER. [L. S.]
EDWIN S. FOWLER. [L. S.]

For value received the Equitable Trust Company hereby guarantees the payment of the principal and interest of the above bond according to the terms thereof.

[L. S.] EQUITABLE TRUST COMPANY,
By JONATHAN EDWARDS, *Pres't.*

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

27 This bond is one of ten bonds amounting in the aggregate to ten thousand dollars, given for an actual loan of money made by the Equitable Trust Company to Sophie and Edwin S. Fowler and secured by a trust deed from Sophie and Edwin S. Fowler to Jonathan Edwards, trustee, of New York, duly recorded and conveying property situated in the town of Springfield, county of Sangamon and State of Illinois, valued at not less than twenty-five thousand (25,000) dollars.

UNITED STATES OF AMERICA.

1000. Number 7240. 1000.

Real-estate mortgage bond.

Negotiated and guaranteed by the Equitable Trust Company of New London, Connecticut.

Know all men by these presents: That we, Sophie Fowler and Edwin S. Fowler, of the county of Sangamon, State of Illinois, are justly indebted to the Equitable Trust Company of New London, Connecticut, in the sum of one thousand dollars, lawful
28 money of the United States, which sum we promise to pay to the Equitable Trust Company, or to the registered holder hereof, or, if not registered to bearer on the first day of February A. D. 1881, together with interest thereon, from and after the date hereof, at the rate of seven per cent. per annum, at the office of the Equitable Trust Company, in the city of New York, on the first days of August and February in each year, on presentation and surrender of the annexed interest coupons as they shall severally become due, as provided herein, and at the rate of ten per cent. thereon after default of payment of the principal hereof.

This bond shall pass by delivery, or by transfer on the books of the company in the city of New York. No transfer except on the books of the company, shall be valid unless the last transfer shall have been to bearer. This bond shall be subject to registration or transferable to bearer at the option of any lawful holder thereof. This bond shall not be negotiable until guaranteed by the Equitable Trust Company under its seal. It is hereby expressly agreed that if default be made in the payment of any one of the installments of interest aforesaid, at the time and place aforesaid, when and where the same shall become due and payable,
29 and such default shall continue for ten days after such installment becomes due and payable as aforesaid then and in that event the said principal sum of one thousand dollars, shall, at the election of the legal holder hereof, at once become due and payable, anything hereinbefore contained to the contrary notwithstanding: such election to be made at any time after the expiration of said ten days without notice.

It is further expressly agreed that if at any time until the principal shall be fully paid, the premises made security for this bond or any portion thereof shall be sold for any tax or assessment whatsoever, or the undersigned shall fail to keep the said premises insured to the amount of $8,000, and the insurance policies properly assigned to Jonathan Edwards, trustee, then and in that event the said principal sum of one thousand dollars, shall, at the election of the legal holder hereof, become due and payable, anything hereinbefore contained to the contrary notwithstanding.

In witness whereof, we have hereto affixed our hands and seals, at Springfield Illinois, this first day of February, A. D. 1876.

SOPHIE FOWLER. [L. S.]
EDWIN S. FOWLER. [L. S.]

30 For value received the Equitable Trust Company hereby guarantees the payment of the principal and interest of the above bond according to the terms thereof.

EQUITABLE TRUST COMPANY,
[L. S.] By JONATHAN EDWARDS, *Pres't.*

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

This bond is one of ten bonds, amounting in the aggregate to ten thousand dollars given for an actual loan of money made by the Equitable Trust Company to Sophie and Edwin S. Fowler and secured by a trust deed from Sophie and Edwin S. Fowler, to Jonathan Edwards, trustee, of New York, duly recorded and conveying property situated in the town of Springfield, county of Sangamon and State of Illinois, valued at not less than twenty-five thousand (25,000) dollars.

UNITED STATES OF AMERICA.

1000. Number 7241. 1000.

Real-estate mortgage bond.

Negotiated and guaranteed by the Equitable Trust Company of New London, Connecticut.

31 Know all men by these presents, That we, Sophie Fowler and Edwin S. Fowler of the county of Sangamon, State of Illinois, are justly indebted to the Equitable Trust Company of New London, Connecticut, in the sum of one thousand dollars, lawful money of the United States, which sum we promise to pay to the Equitable Trust Company, or to the registered holder hereof, or, if not registered to bearer on the first day of February A. D. 1881, together with interest thereon, from and after the date hereof, at the rate of seven per cent. per annum, at the office of the Equitable Trust Company, in the city of New York, on the first days of August and February in each year, on the presentation and surrender of the annexed interest coupons as they shall severally become due, as provided herein, and at the rate of ten per cent. thereon after default of payment of the principal hereof.

This bond shall pass by delivery or by transfer on the books of the company in the city of New York. No transfer, except on the books of the company, shall be valid unless the last transfer shall have been to bearer. This bond shall be subject to registration or transferable to bearer at the option of any lawful holder
32 thereof. This bond shall not be negotiable until guaranteed by the Equitable Trust Company under its seal. It is hereby

expressly agreed that if default be made in the payment of any one of the installments of interest aforesaid, at the time and place aforesaid, when and where the same shall become due and payable, and such default shall continue for ten days after such installment becomes due and payable as aforesaid, then and in that event the said principal sum of one thousand dollars, shall at the election of the legal holder hereof at once become due and payable, anything hereinbefore contained to the contrary notwithstanding: such election to be made at any time after the expiration of said ten days without notice.

It is further expressly agreed that if at any time until the principal shall be fully paid, the premises made security for this bond or any portion thereof, shall be sold for any tax or assessment whatsoever, or the undersigned shall fail to keep the said premises insured to the amount of $8,000, and the insurance policies properly assigned to Jonathan Edwards, trustee, then and in that event the said principal sum of one thousand dollars, shall at the election of the legal holder hereof, become due and payable, anything here-
33 inbefore contained to the contrary notwithstanding.

In witness whereof, we have hereto affixed our hands and seals at Springfield, Illinois this first day of February A. D. 1876.

SOPHIE FOWLER. [L. S.]
EDWIN S. FOWLER. [L. S.]

For value received, the Equitable Trust Company hereby guarantees the payment of the principal and interest of the above bond, according to the terms thereof.

EQUITABLE TRUST COMPANY,
[L. S.] By JONATHAN EDWARDS, *Pres't.*

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

[Written across the face:] Guarantee of Equitable Trust Company is canceled.

This bond is one of ten bonds amounting in the aggregate to ten thousand dollars given for an actual loan of money made by the Equitable Trust Company to Sophie and Edwin S. Fowler, and secured by a trust deed from Sophie and Edwin S. Fowler, to Jonathan Edwards, trustee, of New York, duly recorded and conveying property situated in the town of Springfield, county of Sangamon and State of Illinois, valued at not less than twenty-five thousand (25,000) dollars.

34 UNITED STATES OF AMERICA.

1000. Number 7242. 1000.

Real-estate mortgage bond.

Negotiated and guaranteed by the Equitable Trust Company of New London, Connecticut.

Know all men by these presents, That we, Sophie Fowler and Edwin S. Fowler, of the county of Sangamon, State of Illinois, are justly indebted to the Equitable Trust Company of New London, Connecticut, in the sum of one thousand dollars, lawful money of the United States, which sum we promise to pay to the Equitable Trust Company, or to the registered holder hereof, or if not registered to bearer, on the first day of February, A. D. 1881, together with interest thereon, from and after the date hereof, at the rate of seven per cent per annum, at the office of the Equitable Trust Company, in the city of New York, on the first days of August and February in each year, on presentation and surrender of the annexed interest coupons, as they shall severally become due, as provided herein, at the rate of ten per cent thereon, after default of payment of the principal hereof.

35 This bond shall pass by delivery, or by transfer on the books of the company in the city of New York. No transfer, except on the books of the company, shall be valid unless the last transfer shall have been to bearer. This bond shall be subject to registration, or transferable to bearer at the option of any lawful holder thereof. This bond shall not be negotiable until guaranteed by the Equitable Trust Company under its seal. It is hereby expressly agreed that if default be made in the payment of any one of the installments of interest aforesaid, at the time and place aforesaid, when and where the same shall become due and payable, and such default shall continue for ten days after such installment becomes due and payable as aforesaid, then and in that event the said principal sum of one thousand dollars, shall at the election of the legal holder hereof at once become due and payable, anything hereinbefore contained to the contrary notwithstanding: such election to be made at any time after the expiration of said ten days without notice.

It is further expressly agreed that if at any time until the principal shall be fully paid the premises made security for this

36 bond, or any portion thereof shall be sold for any tax or assessment whatsoever, or if the undersigned shall fail to keep the said premises insured to the amount of $8,000, and the insurance policies properly assigned to Jonathan Edwards, trustee, then and in that event the said principal sum of one thousand dollars shall at the election of the legal holder hereof become due and payable, anything hereinbefore contained to the contrary notwithstanding.

In witness whereof, we have hereto affixed our hands and seals at Springfield, Illinois, this first day of February, A. D. 1876.

SOPHIE FOWLER. [L. S.]
EDWIN S. FOWLER. [L. S.]

For value received, the Equitable Trust Company hereby guarantees the payment of the principal and interest of the above bond, according to the terms thereof

EQUITABLE TRUST COMPANY,
[L. S.] By JONATHAN EDWARDS, *Pres't.*

[Written across the face:] Guarantee of Equitable Trust Company is canceled

[Written across the face:] Guarantee of Equitable Trust Company is cancel-d

[Written across the face:] Guarantee of Equitable Trust Company is canceled

This bond is one of ten bonds amounting in the aggregate to ten thousand dollars, given for an actual loan of money made by the Equitable Trust Company to Sophie and Edwin S. Fowler and secured by a trust deed from Sophie and Edwin S. Fowler to
37 Jonathan Edwards, trustee, of New York, duly recorded and conveying property situated in the town of Springfield, county of Sangamon, and State of Illinois, valued at not less than twenty-five thousand (25,000) dollars.

Your orator further shows that, to secure the payment of the principal sum expressed in said ten mortgage bonds and the interest that might accrue thereon thereafter, the said Sophie Fowler and Edwin S. Fowler, her husband, on the same day, to wit, on the first day of February, A. D. 1876, made their trust deed of that date and thereby conveyed to one Jonathan Edwards, of the city of New York, in fee simple, with full covenants against the right of homestead, etc., the following-described real estate, with the appurtenances thereto belonging—that is to say:

All those certain lots, pieces, and parcels of land situate, lying, and being in the city of Springfield, Sangamon county, Illinois, particularly described as follows: Beginning at the point of intersection of the south line of Cook street with the east line of Second street and running thence south, on the east line of Second
38 street, three hundred and thirty-seven (337) feet to the north line of Wright street; thence east, on the north line of Wright street, three hundred and fifty-eight (358) feet to west line of the lands owned by the Chicago, Alton and St. Louis Railroad Company; thence north, along the west line of said railroad lands, three hundred and forty (340) feet to the south line of Cook street, and thence west, on the south line of Cook street, three hundred and fifty-eight (358) feet to the place of beginning, hereby including in this description lot fifty-four (54) of the assessor's subdivision of the northeast quarter of section thirty-three (33) and part of the west half of the northwest quarter of section thirty-four (34), town. sixteen (16) north, of range five (5) west, of the third principal meridian; also including all that portion or tract of land formerly embraced in block four (4) of W. H. Allen's Addition to the city of Springfield and a strip of land twenty six (26) wide adjoining on the east side of said block four (4) and extending from Wright street north the whole length of said block four:

In trust, nevertheless, for the purpose of securing the principal sum and interest so due to your orator as aforesaid and sub-
39 ject to conditions of defeasance upon the payment of the said principal sum and interest according to the effect of the said ten mortgage bonds, and which said deed of trust was on the seventh day of February, A. D. 1876, duly acknowledged, and afterwards, on the eighth day of February, A. D. 1876, filed for record in the recorder's office of the county of Sangamon aforesaid, as by the said deed of trust and its accompanying certificates of acknowledgement and recording, ready to be produced in court and now here shown and exhibited and made part of this bill.

Your orator further shows, in said deed of trust it was, among other things, provided that in case of the death of the trustee, Jonathan Edwards, one Henry R. Bond, of New London, Connecticut, should become the successor in trust, invested with the title to the premises and having like powers and authority in the premises; and in case of the refusal to act of the said successor trustee, Henry R. Bond, one Robert P. Johnston, then of the city of Springfield, Illinois, should thereupon become the successor in trust of the said Jonathan Edwards, and Henry R. Bond be invested with the title to the premises and with like powers and authority in the premises.

40 Your orator further shows that in said deed of trust it was, among other things, provided that in case of default in the payment of the said principal sum of money or the interest that should thereon accrue, according to the tenor and effect of the said mortgage bonds, nothing in said deed of trust should be so construed as to prevent a foreclosure of the same by process of law or in chancery; and in case of such foreclosure the decree or order for foreclosure and sale should direct and require the expenses of such foreclosure and sale, including the fee of solicitor and counsel, to be taxed by the court at a reasonable amount, but not exceeding 5 per cent. should be paid out of the proceeds of the sale of said premises.

Your orator further shows that in said deed of trust it was, among other things, provided that the grantors would pay all taxes levied or assessed on said premises while the indebtedness to your orator remained in whole or in part unpaid, and during all such time they would protect and save said property from any judgment or sale for any tax or assessment thereon, and that upon the failure of the said grantors to pay any such tax or assessment upon the said premises it should be lawful for your orator to pay the same, and that
41 when the same should be so paid by your orator the sum or sums of money so paid should be taken and considered to be so much additional and further indebtedness due from the grantors to your orator and be secured by said deed of trust upon the premises aforesaid, and draw interest at the rate of ten per cent. per annum from the time of payment, and be collectable in the same manner as the principal indebtedness secured by said deed of trust.

Your orator further shows and charges that the said Sophie Fowler and Edwin S. Fowler did not and *has* not, nor did either of them, nor yet any person for them, pay to your orator, at the city of New

York or elsewhere, the whole or any part of the principal sum of ten thousand dollars expressed in said ten mortgage bonds, on the said first day of February, A. D. 1881, when and as the same accrued and became by the terms of said mortgage bonds due and payable, and the same remains now wholly unpaid; nor has the said Sophie Fowler and Edwin S. Fowler or either of them or any one for them paid to your orator, at the city of New York or elsewhere, the whole or any part of the interest accruing upon the said mortgage bonds, at the rate of ten per cent. per annum, payable semi-annually, on the
42 first days of August and February in each year, from the date of the maturity of said ten mortgage bonds, to wit, February 1st, A. D. 1881, thenceforth, but the same remains and now is wholly unpaid.

Your orator further shows and charges that before the proceedings under this bill can pass to decree and sale the taxes upon the said mortgaged premises for the State, county, town, and city for the year 1882 and now already levied and assessed will, by virtue of the revenue laws of the State of Illinois, become a lien upon the said mortgaged premises and the same become due and payable, and that to protect and save the said premises from sale on account thereof and protect your orator's rights in the premises your orator will be compelled to pay the same; for which payment, when so paid and make, and for all sums of money so by your orator expended, with interest thereon from the time of payment, at the rate of ten per cent. per annum, your orator is equitably entitled to reimbursement out of the proceeds of the sale of said premises and for which your orator's equitable lien upon the said premises is ample and complete.

43 Your orator further shows and charges that Jonathan Edwards, the trustee named and appointed in said deed of trust, departed this life on or about the 30th day of May, A. D. 1882, and that the successor trustees, Henry R. Bond and Robert P. Johnston respectively, have and do refuse to act as such and to exercise the powers and authority in them vested in said deed of trust, whereby resort to a court of equity is rendered necessary to divest the said trustees of the legal title in and to the said premises and subject the same to sale for the purposes aforesaid; that, resort to equity being necessary, your orator is equitably — to a decree of foreclosure and sale of the said mortgaged premises for the payment of the said principal indebtedness of ten thousand dollars and accrued interest as aforesaid, the costs of foreclosure and sale, a reasonable solicitor's fee, but not exceeding 5 per cent., and such disbursements on account of taxes as shall meantime be paid by your orator, with interest thereon as aforesaid.

Wherefore, as your orator charges, the said premises so conveyed has become forfeited, subject, however, to redemption in equity.

Your orator therefore asks the aid of this court in the premises, and makes the said Sophie Fowler, Edwin S. Fowler, Henry
44 R. Bond, and Robert P. Johnston parties defendant to this bill, to the end that they may be required to answer the same according to the rules and practice of this court, but not under oath,

their answers under oath being hereby waived; that an account may be taken, under the direction of the court, of the amount found to be due to your orator on the first day of February, A. D. 1881, on said ten mortgage bonds, and interest thereon from that day at the rate of ten per cent. per annum, as also of the amount of a reasonable solicitor's fee, not, however, exceeding 5 per centum on the amount found to be due to your orator under said deed of trust, and of such disbursements for account of taxes as may appear to have been made by you orator, with interest at ten per cent. per annum from the time paid; that the said defendants, one or more of them, may be decreed to pay to your orator the full sum that shall appear on such accounting to be due to it, together with the costs of this proceeding, by a short day to be fixed by the court; that in default of such payment the said mortgaged premises may be sold, as directed by the court, to satisfy the amount due and costs; that, in case
45 of such sale and a failure to redeem therefrom pursuant to the statute of the State of Illinois in such case provided, the defendants and all persons claiming through or under them subject to the commencement of this suit may be forever barred and foreclosed of all right and equity of redemption in the said premises, and that your orator may have such other and further relief in the premises as equity may require and to your honors may seem meet.

And may it please your honors to grant unto your orator the usual writ of subpœna in chancery, issuing according to the rules and practice of this court, requiring the said defendants and each of them, on a day certain to be therein named, personally to appear in this cause and make answer as aforesaid, and to stand to and abide such order and decree herein as may be entered in this cause.

EQUITABLE TRUST COMPANY,
By W. L. GROSS, *Its Solicitor.*

W. L. GROSS,
Comp's Sol'r, Springfield, Ill.

(Indorsed:) Filed October 27, 1882. J. A. Jones, clerk.

46 No. 1.

Deed of Trust.

This indenture, made this first day of February, in the year of our Lord one thousand eight hundred and seventy-six, between Sophie Fowler and Edwin S. Fowler, her husband, of the county of Sangamon and State of Illinois, parties of the first part, and Jonathan Edwards, of the city, county, and State of New York, trustee, party of the second part, witnesseth:

That whereas the said Sophie Fowler and Edwin S. Fowler are justly indebted to the Equitable Trust Company of New London, Connecticut, in the sum of ten thousand dollars, for borrowed money, evidenced by ten (10) coupon bonds, each for the principal sum of one thousand dollars, and number- respectively from — to —, both inclusive, all bearing date of February first, one thousand eight hundred and seventy-six, and payable on the first day of February,

one thousand eight hundred and eighty-one, with interest at the rate of seven per cent. per annum, payable semi-annually, which bonds, with the interest coupons thereto annexed, were executed by the said Sophie Fowler and Edwin S. Fowler to the said Equitable Trust Company, and are payable at its office, in the said city of New York,
47 and were given to secure a loan of ten thousand dollars, payable as aforesaid, with interest at nine per cent. per annum, payable semi-annually, of which said interest seven per cent. per annum is secured by this trust deed and is to be paid as in said bonds and the coupons attached thereto provided; and the two per cent. is secured by the notes of the said Sophie Fowler and Edwin S. Fowler, secured by a trust deed made subject to this trust deed, bearing even date herewith, of the property herein described, it being agreed by the parties hereto and their representatives and assigns that the portion of the interest on said principal sum represented by said notes is, at the option of the said Equitable Trust Company, to be retained by said company or its endorsee or assignee of said notes separate and detached from the said principal of borrowed money and the portion of interest thereon represented by the said bonds and coupons:

Now, therefore, the said parties of the first part, in consideration of the said loan and to secure the payment of the said several bonds and the portion of the interest to become due thereon represented by said coupons, and also to secure the faithful performance
48 of all the covenants, conditions, stipulations, and agreements contained herein or in said bonds, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and confirm, unto the said party of the second part, his successor or successors and assigns, all those certain lots, pieces, or parcels of land in the city of Springfield, county of Sangamon, and State of Illinois, known and described as follows, to wit:

Beginning at the point of intersection of the south line of Cook street with the east line of second street and running thence south on the east line of Second street 337 feet to the north line of Wright street, thence east, on the north line of Wright street, 358 feet to the west line of the lands owned by the Chicago, Alton & St. Louis Railroad Company; thence north, along the west line of said railroad lands, 340 feet to the south line of Cook street, and thence west, on the south line of Cook street, 358 feet to the place of beginning, hereby including in this description lot 54 of the assessor's subdivision of the N. east ¼ of section 33 and part of the W. ½ of N. west ¼ of section 34, town. 16 *A.*, of range 5 west, of 3rd principal meridian; also including all that portion or tract of land formerly em-
49 braced in block 4 of W. H. Allen's Addition to the city of Springfield and a strip of land 26 feet wide adjoining on the east side of said block 4 and extending from Wright street north the whole length of said block 4.

Together with all the privileges and appurtenances thereunto belonging or in anywise appertaining and all the estate, right, title, and interest, dower and right of dower, of the said parties of the first part in and to the same and every part and parcel thereof; to have

and to hold the above-described premises, with the appurtenances, unto the said party of the second part, his successors and assigns forever; in trust, nevertheless, that if default be made in the payment of any one of the installments of interest aforesaid at the time and place specified in said bonds and coupons, or if the said parties of the first part shall fail to perform, fulfil, and keep all and singular the covenants, conditions, stipulations, and agreements herein or in said bonds contained, or if said parties of the first part shall suffer said premises or any part thereof to be sold for any tax or assessment whatsoever, or shall do or permit to be done to, in, upon, or about said premises or any part thereof anything that may
50 in anywise impair, weaken, or diminish the security intended to be effected under and by this instrument, or in case there exists any lien, claim, or incumbrance upon the premises above described that is prior to this deed and not described or referred to herein, then and in either such case the said principal sum of ten thousand dollars and all arrearages of interest may be collected at any time without relief from any valuation or appraisement laws, the same being hereby expressly waived; and the said party of the second part or his successors in trust shall, on demand in writing of the holders of the bonds secured hereby, proceed to advertise and sell the said premises herein described in the manner hereinafter provided to be done in case default shall be made in the payment of said bonds or any one or more of them at maturity, and shall apply the proceeds arising from any such sale as is hereinafter provided if sale shall be made for non-payment of said bonds or any one or more of them.

And it is further covenanted and agreed that in case of any default in the payment of said bonds or any one or more of the same, or any part of any one of the same, when and as said bonds become due and payable, then and from thenceforth it shall be lawful
51 for the said party of the second part, his successors in trust or assigns, and they and each of them are hereby authorized and empowered, upon the request of the holder of any one of said bonds or coupons, to enter in and upon and take possession and to grant, bargain, sell, and dispose of all and singular the premises hereby granted or any and every part thereof at public auction, having first given at least thirty days' previous notice of the time and place of such sale by publication once in each week for four successive weeks in some newspaper published in the county where said premises are situated, and to adjourn such sale from time to time and for such length of time as he shall think expedient, and to make, execute, and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same in fee simple (and all the recitals that may be contained in such deed or deeds made in pursuance of this trust deed, setting forth the fact of due notice, advertisement, and sale, and any and all such other facts and statements as may be proper to evidence the legality of such sale and conveyance and that the same had been duly
52 made in all respects so as to meet all the requirements herein contained or arising in law, and as may be necessary to con-

vey a good title, shall be deemed to be true and shall be considered and taken as *prima facie* evidence of all the facts and matters set forth in such recitals), and out of the money arising from such sale to pay the whole amount of said bonds for said sum of ten thousand dollars, together with the accrued interest thereon, and all sums advanced by him or them on account of said property, together with the costs and charges of advertisement and sale of the said premises or any part or parts thereof, including the fees and charges of the attorney, solicitor, or other person making such sale, and to render the overplus of the purchase-money, if any there shall be, unto the said Sophie Fowler and Edwin S. Fowler, their heirs, executors, administrators, or assigns, which sale so to be made shall be a perpetual bar in law and equity against the said parties of the first part, their heirs and assigns and all other persons claiming or to claim the premises or any part thereof by, from or under them or any of them; but if the amount realized from said sale, after first paying all costs, charges, and expenses, including attorney's or solicitor's fees and all sums of money advanced on account of said property, with interest on the same at ten per cent., shall not be sufficient to fully pay
53 said bonds for ten thousand dollars and all interest that shall have accrued up to the time of said sale, whether due or not due, then to apply the amount so received over and above costs and charges, first, in payment of the interest then accrued and unpaid, whether due or not, and of any amount or amounts that may have been advanced as aforesaid, and to endorse the balance *pro rata* as so much paid on said bonds given for said principal sum, it being distinctly understood that it shall not be necessary before exercising the power of sale herein contained to enter or to attempt to enter into or upon said premises or any part of the same, said power of sale not being or not intended to be in any way dependant upon any entry upon or into said premises, and it shall not be the duty of the purchaser or purchasers at any such sale to see to the application of the purchase-money.

And it is further agreed by and between the parties to this instrument that nothing in this trust deed or the powers of sale herein contained is intended or shall be so construed as to prevent a foreclosure of the same by process of the law or in chancery, and
54 that the said party of the second part or his successor or successors shall, upon any foreclosure of this trust deed, recover, in addition to principal, interest, and ordinary costs, a reasonable attorney's or solicitor's fee, not exceeding five per cent. for the collection thereof, all to be collected without relief from valuation or appraisement laws.

And in case of any such foreclosure it is hereby stipulated that the decree or order for foreclosure and sale shall direct and require that the expenses of such foreclosure and sale, including the fees of solicitor and counsel to be taxed by the court at a reasonable amount, shall be paid out of the proceeds of the sale of such premises by the said party of the second part, his successor or successors, it being distinctly understood and agreed that the legal holder or holders of said bonds or any one or more of them, at the time of any sale of the premises

hereby conveyed under the powers herein contained or under the foreclosure of this trust deed or their legal representative, may bid for and become the purchaser or purchasers of said premises or any part thereof at such sale and receive a deed or deeds of conveyance for the premises so purchased the same as though he or they
55 had no interest in the indebtedness secured hereby, it being also distinctly agreed by and between the parties to this instrument that upon any foreclosure thereof, either under the powers of sale herein contained or in equity, it shall not be necessary for the party of the second part or his successors in trust or any other party in interest seeking to purchase the same to produce or file in court any of the bonds secured hereby.

And the said Sophie Fowler and Edwin S. Fowler, her husband; their heirs, executors, and administrators, do covenant and agree to and with the said party of the second part, his successors and assigns, that they will pay or cause to be paid all taxes or assessments that may be laid, charged, or assessed on said premises or any part thereof while said indebtedness or any part thereof remains unpaid, and that they will at all times, until said indebtedness shall be fully paid and satisfied, protect and save said property from any judgment or sale for any tax or assessment, whether such tax or assessment shall be legally levied or not; and that if at any time and whenever and as often as any judgment shall be rendered
56 against said property or any part of the same for any tax or assessment of any kind or nature whatsoever, whether such tax or assessment shall have been legally levied or assessed or not, it shall be lawful for said party of the second part, his successors or assigns, to pay the same at any time thereafter; and the amount of any and all such payments so made by said party of the second part, his successors or assigns, shall be deemed and taken and is hereby declared to be so much additional and further indebtedness due from said Sophie Fowler and her said husband, Edwin S. Fowler, their heirs, executors, or administrators, to said party of the second part, his successors or assigns, as soon as paid by him or them, secured by this trust deed, bearing interest at ten per cent., and may be collected in the same manner as is hereinafter provided for the collection of the other indebtedness secured hereby, or by suit at law in any court having proper jurisdiction; and do further covenant and agree that any and all sums of money that shall or may at any time become due hereon from said Sophie Fowler and Edwin S. Fowler to said party of the second part, his suc-
57 cessors and assigns, whether on principal or interest secured hereby and not paid at maturity or for moneys advanced in any way in pursuance hereof, shall bear interest at the rate of ten per cent. per annum from the time the same became due or was advanced to the date of repayment of the same.

And, further, that until full payment of the amount hereby secured they will insure and keep insured the buildings now on or that may hereafter be built upon said premises as provided in said bonds, and should they fail to keep the premises insured as agreed it shall then be lawful for the said party of the second part, his suc-

cessors in trust or assigns, to effect insurance on the buildings in his or their own name or names or otherwise, and the money thus paid for insurance shall be a charge upon said premises, and shall bear interest at ten per cent. per annum, and shall be and is hereby declared to be secured by said bonds and by this instrument in the same manner as the said principal sum and interest above mentioned are secured, and said money so paid for insurance may at any time after the payment thereof be collected by suit or otherwise from the said parties of the first part by said party of the
58 second part or his successors, with interest at the rate of ten per cent. per annum from the time the same shall be advanced, with reasonable attorney's fees for collection and without relief from valuation or appraisement laws.

And should the said party of the second part, his successors or assigns, by reason of any such policy of insurance as aforesaid, receive any sum or sums of money for any damage by fire to the said building or buildings, the same, after first paying the cost and expenses of collecting the same, may be applied, first, to the payment of all sums of money theretofore advanced by said company or said party of the second part or his successors or assigns on account of said property, and, second, to the satisfaction and discharge, as far as the same will go, of the indebtedness secured hereby, or may be paid over either wholly or in part to said parties of the first part, their heirs or assigns, to enable them to repair said buildings or to erect new buildings in their place without affecting the lien of this trust deed for the full amount secured thereby before such damage by fire or such payment over took place.

59 And said parties of the first part, for themselves, their heirs, executors, administrators, and assigns, hereby covenant and agree to and with the said party of the second part, his successors and assigns, that their title to the above-granted premises is free, clear, and unencumbered; that they are lawfully seized of the premises aforesaid as of a sure and indefeasible estate of inheritance in fee simple, and that they will warrant and forever defend the same against all claims whatsoever.

And, further, said parties of the first part expressly covenant and agree that they will well and truly pay the principal sum of money, with the interest thereon, mentioned in said several bonds and interest coupons, and perform, fulfil, and keep all the covenants, conditions, stipulations, and agreements therein contained according to the tenor and effect, true intent and meaning, thereof.

And the said Sophie Fowler and Edwin S. Fowler, her husband, expressly waive and release any and all rights in or to the above-granted lands under and by virtue of the homestead exemption laws of the State of Illinois.

60 And it is further agreed by and between the parties aforesaid that in case of the death, absence from the State of New York, inability or refusal to act of said party of the second part at any time when his action under the foregoing powers and trusts may be required, then Henry R. Bond, of New London, Connecticut, shall be, and hereby is, appointed and made successor to said party

of the second part in said trusts with like powers and authority; and the title to said premises shall thereupon become vested in such successor in trust for the purposes aforesaid.

And in case of the death, abscence from the State of New York, inability or refusal to act of the said party of the second part and the said Henry R. Bond at any time when action under the foregoing powers and trusts may be required, then Robert P. Johnston, of Springfield, Ills., shall be, and hereby is, appointed and made successor to said party of the second part and said Henry R. Bond under this deed with like powers and authority; and the title to said premises shall thereupon become vested in said last-named successor in trust for the uses and purposes aforesaid:

Provided always, and these presents are upon this express condition, that if the said parties of the first part, their heirs, executors, or administrators, or the said Sophie Fowler & her said
61 husband, Edwin S. Fowler, their heirs, executors, or administrators, shall well and truly pay to the said Equitable Trust Company, their successors or assigns, the full amount of said principal sum of ten thousand dollars, with all the interest thereon, at the several times and in the manner specified in the said several bonds and interest coupons, and shall well and truly perform, fulfil, and keep all and singular the covenants, conditions, stipulations, and agreements contained in said bonds or herein contained on their part and behalf to be done, performed, and kept, then the said premises shall be reconveyed, the said parties of the first part paying a proper fee to said trustee for such conveyance.

In testimony whereof the said parties of the first part have hereunto set their hands and seals this first day of February, A. D. 1876.

SOPHIE FOWLER. [L. S.]
EDWIN S. FOWLER. [L. S.]

Signed, sealed, and delivered in the presence of—
DR. G. C. SOMERS.

STATE OF ILLINOIS, } ss:
Cook County, }

62 I, Daniel P. Hathaway, a notary public in and for the said county, in said county, in the State aforesaid, residing in said county, do hereby certify that Sophie Fowler and Edwin S. Fowler, her husband, who are personally known to me as the same persons whose names are subscribed to the within trust deed as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the same as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of all rights under and benefit of the exemption and homestead laws of the State of Illinois in and to the premises therein described, with the appurtenances and the proceeds of the sale thereof.

And the said Sophie Fowler, wife of the said Edwin S. Fowler, having been by me examined separately and apart and out of the

hearing of her husband, and the contents and meaning of the said trust deed having been by me made known & fully explained to her, she acknowledged that she had freely and voluntarily executed the same and relinquished her dower and all other right, title, and interest, including her homestead and exemption right as
63 aforesaid to the land and tenements in said deed mentioned and to the proceeds of sale thereof, without compulsion or fear of her said husband or any other person, and that she does not wish to retract the same.

Given under my hand and notarial seal this seventh day of February, in the year of our Lord one thousand eight hundred and seventy-six.

[L. S.] D. P. HATHAWAY,
Notary Public.

STATE OF ILLINOIS, }
Sangamon County, } ss:

RECORDER'S OFFICE, SANGAMON COUNTY, ILLINOIS,
CITY OF SPRINGFIELD, *Feb.* 8, 1876.

I, James A. Winston, clerk of the circuit court within and for the county aforesaid and *ex officio* recorder of deeds, mortgages, and other instruments of writing required by law to be recorded, do hereby certify that the within instrument is duly recorded in my office, in Book No. 43 of M'tg's, page 216.

JAMES A. WINSTON,
Clerk and ex Officio Recorder, Sangamon County, Ill.

(Indorsed:) Filed October 27, 1882. J. A. Jones, clerk.

64 *Deed of Trust.*

No. 2.

This indenture, made this first day of February, in the year one thousand eight hundred and seventy-six, between Sophie Fowler and Edwin S. Fowler, her husband, of the city of Springfield, in the county of Sangamon and State of Illinois, parties of the first part, and Jonathan Edwards, trustee, of the city, county, and State of New York, party of the second part, witnesseth: That whereas the said Sophie Fowler and Edwin S. Fowler, her husband, parties of the first part, are justly indebted to the Equitable Trust Company of New London, Connecticut, in the sum of ten thousand dollars for borrowed money, evidenced by ten coupon bonds, each for the principal sum of one thousand dollars, and numbered respectively from — to —, both inclusive, all bearing date of February first, one thousand eight hundred and seventy-six, and payable on the first day of February, one thousand eight hundred and eighty-one, with interest at the rate of seven per cent. per annum, payable semi-annually, which bonds, with the interest coupons thereto annexed, were executed by the said Sophie Fowler and Edwin S. Fowler to

the said Equitable Trust Company, and are payable at its
65 office, in said city of New York, and were given to secure a loan of ten thousand dollars, payable as aforesaid, with interest at nine per cent. per annum, payable semi-annually, of which said interest seven per cent., together with the aforesaid principal sum of ten thousand dollars, is secured to be paid by a certain other trust deed, bearing date this day, between the said parties, and is to be paid as in the said bond and coupons attached thereto provided, and to secure the remaining two per cent. the said Sophie Fowler and Edwin S. Fowler have executed their ten certain promissory notes, bearing even date herewith, payable to the order of the Equitable Trust Company of New London, Connecticut, at its office, in the city of New York, as follows, viz:

The first note for one hundred dollars ($100.00) on the first day of August, 1876.

The second note for one hundred dollars ($100.00) on the first day of February, 1877.

The third note for one hundred dollars ($100.00) on the first day of August, 1877.

The fourth note for one hundred dollars ($100.00) on the first day of February, 1878.

The fifth note for one hundred dollars ($100.00) on the first day of August, 1878.

The sixth note for one hundred dollars ($100.00) on the first day of February, 1879.

The seventh note for one hundred dollars ($100.00) on the first day of August, 1879.

The eighth note for one hundred dollars ($100.00) on the first day of February, 1880.

The ninth note for one hundred dollars ($100.00) on the first day of August, 1880.

The tenth note for one hundred dollars ($100.00) on the first day of February, 1881.

66 Which said promissory notes, it is understood, may, at the option of the said Equitable Trust Company, be retained by said company or its endorsee or assignee separate and detached from the said principal of borrowed money and interest thereon at the rate of seven per centum per annum, represented by said bonds and interest coupons;

And whereas the said parties of the first part are desirous of securing the prompt and full payment of said promissory notes and interest that may accrue thereon, in whose hands soever the same may be;

Now, therefore, the said parties of the first part, in consideration of the premises and for the purposes aforesaid and in the further consideration of one dollar to them in hand paid by said party of the second part, the receipt whereof is hereby confessed, have and do hereby grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, all the following-described lands and premises, situate in the city of Springfield, county of Sangamon and State of Illinois, to wit: Beginning at the point of

intersection of the south line of Cook street with the east line of
Second street and running thence south on the east line of
67 Second street 337 feet to the north line of Wright street;
thence east on the north line of Wright street 358 feet to the west line of the lands owned by the Chicago, Alton & St. Louis Railroad Company; thence north along the west line of said railroad lands 340 feet to the south line of Cook street, and thence west on the south line of Cook street 358 feet to the place of beginning, hereby including in this description lot 54 of the assessor's subdivision of the N. E. ¼ of section 33 and part of the west half of N. W. ¼ of section 34, town. 16 N., of range 5 west, of 3rd principal meridian; also including all that portion or tract of land formerly embraced in block 4 of W. H. Allen's Addition to the city of Springfield and a strip of land 26 feet wide adjoining on the east side of said block 4 and extending from Wright street north the whole length of said block 4.

But this trust deed and the money secured thereby is subject, and is hereby declared to be subject, to the aforesaid certain other trust deed, bearing date this day, between the same parties, made to secure the said principal sum of ten thousand dollars and interest at the rate of seven per centum per annum, as in said deed specified;
which said principal sum of ten thousand dollars, together
68 with the interest at the rate of seven per centum per annum
thereon, the said parties of the first part hereto hereby covenant to and with the said party of the second part hereto, the said The Equitable Trust Company, its successors in interest, endorsees, and assignees of said promissory notes, they, the said parties of the first part, will pay or cause to be paid promptly at the maturity thereof:

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, to the said party of the second part, his heirs and assigns forever, in trust, nevertheless, that in case of default in the punctual payment of the said principal sum secured by the said certain other trust deed, bearing date this day, between the same parties and hereinbefore referred to, or of any installments of interest upon the same upon the days fixed therein for the payment of the same, or in case of default in the payment of either of said notes secured hereby or any part thereof on the days when the same may respectively mature according to the tenor and effect of said notes, then, on application of the legal holder of said notes, to sell and dispose of the
said premises and all the right, title, benefit, and equity of
69 redemption of said parties of the first part, their heirs or assigns therein, subject, however, to the lien of the said other trust deed between the same parties this day executed and hereinbefore referred to, at public auction for the highest and best price the same will bring in cash, at least thirty days' previous notice having been given of the time and place of such sale by publication once in each week for four successive weeks in some newspaper at that time published in the county where said premises are situated, and shall make, execute, and deliver to the purchaser or purchasers

at such sale good and sufficient deed or deeds of conveyance for the premises sold (and the recitals contained in such deed or deeds of notice, advertisement, sale, and any other facts or statements respecting such sale shall be deemed to be true, and shall be considered and taken as *prima facie* evidence of all the matters set forth in such recitals and statements), and out of the proceeds or avails of such sale and the purchase-money paid thereon, after first paying all costs of advertising and sale, including commissions, such as are allowed by law to sheriffs on sale of real estate on execution, and all other expenses of this trust, including all moneys advanced for insurance, taxes,
70 or other liens and assessments, with the interest thereon, to pay the principal of said notes and interest accrued on said notes up to the time of such sale, rendering the overplus (if any) unto the said parties of the first part, their legal representatives or assigns, on reasonable request; and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase-money, which sale or sales so made shall be a perpetual bar, both in law and equity, against the said parties of the first part, their heirs and assigns, and all other persons claiming the premises aforesaid or any part thereof by, from, through, or under said parties of the first part or any of them, it being distinctly understood and agreed that the legal holder or holders of said notes or any one or more of them at the time of any such sale, or their representatives, may bid for and become the purchaser or purchasers of said premises or any part thereof at such sale or at any sale under the decree of any court for the foreclosure of this trust deed, and receive a deed or deeds of conveyance for the premises so purchased, the same as though he or they had no interest in the indebtedness secured hereby.

71 And in consideration of the sum of one dollar paid to the said parties of the first part, and in order to create a lien and encumbrance on said premises under this deed for the purposes aforesaid, and to carry out the foregoing specific application of the proceeds of any sale that may be made by virtue hereof, the said parties of the first part do hereby release and waive all rights under and by virtue of the homestead exemption laws of the State of Illinois in and to the lands and premises aforesaid and the proceeds of sale thereof, and agree to surrender up possession thereof to the purchaser or purchasers at such sale peaceably on demand, whether said premises shall be sold under the power of sale herein contained or by virtue of proceedings at law or in chancery.

And the said parties of the first part do hereby authorize and empower said party of the second part and his successors in trust to adjourn such sale from time to time on request of the legal holder of said note or notes at the discretion of said party of the second part or his successors in trust, and also to sell said premises entire, without division, or in parcels as said party of the second part may think best. Nothing in this trust deed or the power of sale
72 herein contained is intended or shall be so construed as to prevent a foreclosure of the same by the said trustee by process of law or in chancery, and in case of any such foreclosure it is

hereby stipulated and agreed that the decree or order for foreclosure and sale shall direct and require that the expenses of such foreclosure and sale, including the fees of solicitor and counsel, to be taxed by the court at a reasonable amount, shall be paid by the said trustee out of the proceeds of the sale of said premises.

And the said Sophie Fowler and Edwin S. Fowler, her husband, for themselves and their heirs, executors, and administrators, covenant and agree to and with the said party of the second part, his successors in trust hereinafter named and their assigns, that at the time of the ensealing and delivery of these presents they were well seized of said premises in fee simple and have good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form as aforesaid; that the same are free and clear of all liens and incumbrances whatsoever; that the said parties of the first part will in due season pay all taxes and assessments on said premises until the indebtedness aforesaid shall be fully paid, and will
73 keep — all buildings that may at any time be on said premises during the continuance of said indebtedness, and will assign, with proper consent of the insurers, the policy or policies of insurance to said party of the second part as further security for the indebtedness aforesaid, and in case said parties of the first part shall fail so to keep said buildings insured or to pay said taxes and assessments, then the party of the second part shall have full right, power, and authority to pay the same and to insure said buildings, and the amount so paid shall constitute a part of the debt secured by this instrument, and, upon sale of the land under it, shall, with the amount of said notes and interest, be paid to the holder of said notes.

A reconveyance of said premises to be made to said parties of the first part, their heirs or assigns, at their expense, on full payment of the indebtedness aforesaid and performance of the covenants and agreements herein by the parties of the first part.

But in case of a breach of any of the covenants or agreements herein by the parties of the first part, their executors, administrators, or assigns, the said premises shall be subject to sale and
74 conveyance on request of the legal holder of said notes in like manner and with the same effect as if the said indebtedness had matured.

And in case of the death, abscence from the State of New York, inability or refusal to act of said party of the second part, the — Henry R. Bond, of New London, Connecticut, shall be, and he hereby is, appointed and made successor in trust to said party of the second part under this deed with like powers and authority, and the said premises shall thereupon become vested in such successor in trust for the uses and purposes aforesaid.

In witness whereof the party of the first part hereunto set their hands and seals the day and year first above written.

SOPHIE FOWLER. [L. S.]
EDWIN S. FOWLER. [L. S.]

Signed, sealed, and delivered in the presence of—
DR. G. C. SOMERS.

STATE OF ILLINOIS, } ss:
Cook County, }

I, Daniel P. Hathaway, a notary public in and for said county, in said county, in the State aforesaid, residing in said county, do hereby certify that Sophie Fowler and Edwin S. Fowler, her husband, who are personally known to me as the same persons whose names are subscribed to the within trust deed as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the same as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of all right under and benefit of the exemption and homestead laws of the State of Illinois in and to the premises therein described, with the appurtenances and the proceeds of sale thereof.

And the said Sophie Fowler, wife of the said Edwin S. Fowler, having been by me examined separately and apart and out of the hearing of her husband, and the contents and meaning of the said trust deed having been by me made known and fully explained to her, she acknowledged that she had freely and voluntarily executed the same and relinquished her dower and all other right, title, and interest, including her homestead and exemption right as aforesaid, to the land and tenements in said deed mentioned and to the proceeds of sale thereof, without compulsion or fear of her said husband or any other person, and that she does not wish to retract the same.

Given under my hand and notarial seal this seventh day of February, in the year of our Lord one thousand eight hundred and seventy-six.

[L. S.]

D. P. HATHAWAY,
Notary Public.

STATE OF ILLINOIS, } ss:
Sangamon County, }

RECORDER'S OFFICE, SANGAMON COUNTY, ILLINOIS,
CITY OF SPRINGFIELD, *Feb'y* 8, 1876.

I, James A. Winston, clerk of the circuit court within and for the county aforesaid and *ex officio* recorder of deeds, mortgages, and other instruments of writing required by law to be recorded, do hereby certify that the within instrument is duly recorded in my office in Book No. 43 of M'tg's, page 225.

JAMES A. WINSTON,
Clerk and ex Officio Recorder, Sangamon County, Ill.

(Indorsed:) Filed October 27, 1882. J. A. Jones, clerk.

Afterwards, to wit, on said twenty-seventh day of October, of the year last aforesaid, a writ of subpœna was issued in said cause, directed and delivered to the marshal of said district to execute, which subpœna and return of marshal thereto is as follows, to wit:

77 UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

The United States of America to Sophie Fowler, Edwin S. Fowler, Henry R. Bond, and Robert P. Johnston, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the southern district of Illinois, at Springfield, in said district, on the first Monday in the month of December next, to answer the bill of complaint of Equitable Trust Company this day filed in the clerk's office of said court, in said city of Springfield, then and there to receive and abide by such judgment and decree as shall then or thereafter be made upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this 27th day of October, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the one hundred and seventh year.

[L. S.]

J. A. JONES, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Springfield aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed and a decree entered accordingly.

J. A. JONES, *Clerk.*

78 Executed this writ upon the following-named defendant, not having been able to find her to serve personally, by leaving a true copy thereof, with the seal of the court attached, for her at her usual place of abode, with a person above the age of ten years and a member of her family and to whom the contents were made known by me; to wit, upon Sophie Fowler, on the 1st day of November, A. D. 1882, with Lulu Fowler.

Edwin S. Fowler, Henry R. Bond, and Robert P. Johnston not found in my district.

JACOB WHEELER, *U. S. M.*,
By G. A. FOSTER, *Deputy.*

(Indorsed:) Filed November 2nd, A. D. 1882. J. A. Jones, clerk.

Then, afterwards, to wit, on the ninth day of November, in the year last aforesaid, an *alias* writ of subpœna was issued and delivered to the marshal of said district to execute, which subpœna, with the return of the marshal thereon, is as follows, to wit:

79 UNITED STATES OF AMERICA, } ss :
Southern District of Illinois, }

The United States of America to Edwin S. Fowler, impleaded with Sophie Fowler, Henry R. Bond, and Robert P. Johnston, Greeting :

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the southern district of Illinois, at Springfield, in said district, on the first Monday in the month of December next, to answer the bill of complaint of Equitable Trust Company, this day filed in the clerk's office of said court, in said city of Springfield, then and there to receive and abide by such judgment and decree as shall then or thereafter be made upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the
[L. S.] Supreme Court of the United States of America, at Springfield aforesaid, this ninth day of November, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the one hundred and seventh year.

J. A. JONES, *Clerk.*

Memorandum.

The above-named defendant is notified that unless he shall enter his appearance in the clerk's office of said court, at Springfield aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against him as confessed and a decree entered accordingly.

J. A. JONES, *Clerk.*

80 Executed this writ Nov. 9, 1882, at Springfield, Ill., upon Edwin S. Fowler by leaving a true copy thereof at his residence with Lulu Fowler, a member of his family above the age of ten years, to whom the contents of this writ *was* made known.

JACOB WHEELER,
U. S. Marshal,
By G. A. FOSTER, *Deputy.*

(Indorsed :) Filed November 9, A. D. 1882. J. A. Jones, clerk.

Afterwards, to wit, on the fourth day of December, in the June term of said court, in the year last aforesaid, the following proceedings were had in said court in said cause and entered of record, to wit :

Entry of Appearance of Sophie & Edwin S. Fowler.

EQUITABLE TRUST COMPANY } In Chancery.
vs.
SOPHIE FOWLER *et al.* }

This day come the defendants, Sophie Fowler and Edwin S. Fowler,

by N. M. Broadwell, Esq., their solicitor, and enter their appearance herein.

81 Then, afterwards, to wit, on the fifteenth day of January, in the January term of said court, in the year of our Lord one thousand eight hundred and eighty-three, the following further proceedings were had in said court in said cause and entered of record, to wit:

Leave to Defendants to Answer by January 20, 1883.

EQUITABLE TRUST COMPANY
v.
SOPHIE FOWLER *et al.* } In Chancery.

On motion of defendants, by N. M. Broadwell, Esq., their solicitor, leave is granted them to answer herein by the 20th day of January inst.

And afterwards, to wit, on said twentieth day of January, in the year last aforesaid, came the said defendants, Sophie Fowler and Edwin S. Fowler, by N. M. Broadwell, Esq., their solicitor, and filed in the clerk's office of said court their answer to the bill of complaint herein; which said answer is in the words and figures following, to wit:

82 *Answer of Sophie & Edwin S. Fowler.*

In the United States Circuit Court within and for the Southern District of Illinois. January Term, A. D. 1883.

The answer of Sophie Fowler and Edwin S. Fowler, two of the defendants, to the bill of complaint of The Equitable Trust Company, complainant.

These defendants, now and at all times saving and reserving to themselves all benefit and advantage of exception which can or may be taken for the many insufficiencies and uncertainties in said bill contained, for answer thereto say—

Thas, as the complainant in and by its said bill makes no exhibits of the alleged bonds and trust deed, these defendants cannot say whether they made and executed the same as alleged and set forth in and by said bill or not; wherefore they deny all allegations in said bill contained, wherewith they are charged with having made and executed the bonds and trust deed referred to in and by said bill.

And these defendants, further answering, say that about the first day of February, A. D. 1876, one R. P. Johnston, having an office and doing business in the city of Springfield, Illinois, for said
83 complainant, proposed, on behalf of said complainant, to lend these defendants the sum of ten thousand — for five years, at seven per cent. interest per annum, which said proposed loan these defendants accepted, and thereupon executed and de-

livered to said Johnston, as the agent of complainant, their obligations or bonds for the sum of ten thousand dollars and a trust deed to secure the same, said deed being upon real estate in the State of Illinois; but these defendants do not know, as no exhibits are made by said bill, whether the bonds and trust deed in said bill mentioned are the same or not, but they suppose they are the same bonds and trust deed so referred to or mentioned.

And these defendants, further answering, say that if said bonds and trust deed in said complainant's bill mentioned are the same bonds and trust deed given by them as aforesaid to said Johnston as agent of complainant they and each of them are usurious in this, that while they, the bonds, in the aggregate, are for the sum of ten thousand dollars, as a matter of fact the said Johnston only paid these defendants the sum of eight thousand eight hundred and forty-two $\frac{71}{100}$ dollars, as above, on said obligations, and that the balance of said sum of ten thousand dollars — kept, held, and
84 retained by said Johnston under the pretense and claim that said balance was to be appropriated and held by him as his compensation for negotiating said loan, when the fact is that this was a device or contrivance to cover and conceal the usurious character of the said transaction, and so these defendants say that said complainant, by and through its said agent, Johnston, consum-ated said loan to these defendants in the manner aforesaid to evade and avoid the statute of Illinois in regard to usury; and defendants aver that said loan was and is tainted with usury, and they here set up and plead said statute, and claim and insist upon its protection, benefits, penalties, and forfeitures.

And these defendants, further answering, say that they deny each and every allegation in said bill contained, save and except the allegation that said complainant is a supposed corporation, assuming to be organized and doing business under the laws of the State of Connecticut, which said allegation of the foreign character of said complainant and the supposed powers and prerogatives under the laws of said State of Connecticut these defendants believe to
85 be true, and they therefore admit the same.

And these defendants, further answering, say that by the laws of said State of Connecticut the said complainant was and is forbidden to loan money at a greater rate of interest than six per cent. per annum, and that in conducting the business as aforesaid with defendants by and through said agent in the State of Illinois the said complainant sought to evade and set at naught the laws of its creation, and thereby to escape from the restrictions and limitations and to avoid the penalties and forfeitures prescribed by said laws; and so defendants say that said complainant had no power under the laws of the State of Connecticut to do and transact the business as aforesaid by and through its said agent.

And these defendants, further answering, say that the complainant did not receive in virtue of the laws of its creation a grant of power or authority to carry on the business of loaning money for time or at interest and taking real-estate security therefor in any State or country foreign to or other than the State of Connecticut,

86 and that said complainant, being a foreign corporation without such grant of power, could not exercise the prerogative and privilege of loaning money upon real-estate security in the State of Illinois, and was without capacity to take or receive said bonds and trust deed.

And these defendants, further answering, say that some years ago certain persons duly organized a corporation under the laws of New York for the declared purpose of carrying on and doing a life assurance business, which said corporation so organized was duly named and called the Equitable Life Assurance Company, with its main or chief office in the city of New York; that in the proper exercise of its powers and privileges said Equitable Life Assurance Company extensively embarked in the business of life assurance and so successfully managed and conducted the same that in course of time a large sum of money was accumulated as the earnings or profits of said business.

87 And these defendants, further answering, say that said Equitable Life Assurance Company have no power or authority under its charter and the laws of New York to loan money and receive real-estate security therefor, and that instead of paying said earnings or profits to stockholders of said corporation, as the laws of New York required, certain of the corporations of said Equitable Life Assurance Company went over into the State of Connecticut and organized the said Equitable Trust Company, said complainant, with an office in the city of New York, for the purpose and with the intent, by and through the agency of said complainant, to loan and profit by such business, said earnings or profits, contrary to the laws of New York; that said contrivance of loaning said earnings or profits by and through said complainant corporation was and is but a subterfuge to evade and avoid the laws of New York and the charter of said Equitable Life Assurance Company; and defendants aver that said bonds and trust deed in said bill mentioned were given and received by complainant to secure a loan of said earnings or profits furnished to complainant by said Equitable Life Assurance Company, and that said loan was for the benefit of said last-named company, which is without power under its charter and the laws of New York to make such loans.

88

And these defendants, further answering, say that they deny that the complainant is entitled to the relief or any part thereof demanded by said bill; and defendants pray the same relief and advantage of this answer as if they had pleaded or demurred to said bill, and to be hence dismissed with their reasonable costs, &c.

SOPHIE FOWLER,
EDWIN S. FOWLER,
By their sol'r, N. M. BROADWELL.

(Endorsed:) Filed January 20, 1883. J. A. Jones, clerk.

And afterwards, to wit, on said twentieth day of January, in the year last aforesaid, came the defendants, Henry R. Bond and Robert

P. Johnston, and filed in the clerk's office of said court their refusal to act as trustees herein, and also at the same time filed their entry of appearance; which said refusal to act as trustees and entry of appearance are as follows, to wit:

89 *Refusal of Henry R. Bond to Act as Trustee.*

NEW LONDON, *October 16th*, 1882.

To Equitable Trust Company:

I, Henry R. Bond, hereby refuse and decline to act as trustee under two certain trust deeds, dated February 1st, 1876, made by Sophie Fowler and Edwin S. Fowler to Jonathan Edwards, as trustee, recorded in records of Sangamon county, Illinois, in Book of Mortgages 43, at pages 216 and 225 respectively.

Respectfully, HENRY R. BOND.

(Indorsed:) Filed January 20, 1883. J. A. Jones, clerk.

Refusal of R. P. Johnston to Act as Trustee.

ST. LOUIS, MO., *Nov.* 10, 1882.

To Equitable Trust Co.:

I, Robert P. Johnston, hereby refuse and decline to act as trustee under the two certain trust deeds above herein described and referred to.

ROBERT P. JOHNSTON.

(Indorsed:) Filed January 20, 1883. J. A. Jones, clerk.

90 *Entry of Appearance of Henry R. Bond & R. P. Johnston.*

UNITED STATES OF AMERICA,
Southern District of Illinois.

In the Circuit Court Thereof, of the June Term, A. D. 1882.

EQUITABLE TRUST CO.
vs.
SOPHIE FOWLER, EDWIN S. FOWLER, HENRY R. BOND, and ROBERT P. JOHNSTON. } In Chancery.

Henry R. Bond and Robert P. Johnston, defendants in the above-entitled cause, in proper person, come and severally waive the issue and service of process herein and severally enter their appearance herein.

HENRY R. BOND.
ROBERT P. JOHNSTON.

(Indorsed:) Filed January 20, 1883. J. A. Jones, clerk.

Afterwards, to wit, on the fifth day of February, in the January term of said court, in the year last aforesaid, the following further

proceedings were had in said court in said cause and entered of record, to wit:

91 *Leave to File Replication by February 20.*

EQUITABLE TRUST COMPANY
v.
SOPHIE FOWLER *et al.* } In Chancery.

On motion of complainant, by W. L. Gross, Esq., its solicitor, leave is granted to file replication to defendants' answer by the 20th day of February, inst.

Now, afterwards, to wit, on the twentieth day of February, in the term and year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order Extending Time to File Replication.

EQUITABLE TRUST COMPANY
v.
SOPHIE FOWLER *et al.* } In Chancery.

On motion of complainant, by W. L. Gross, Esq., its solicitor, the time to file replication to defendants' answer is extended to the 10th day of March next.

Then, afterwards, to wit, on the seventh day of March, in the
92 year last aforesaid, came again the complainant, by its solicitor, and filed in the clerk's office of said court its replication to answer of Sophie Fowler and Edwin S. Fowler, which replication is as follows, to wit:

Replication.

STATE OF ILLINOIS, } *ss:*
—— *County,* }

In the U. S. Circuit Court of Southern District of Illinois. January Term, A. D. 1883.

EQUITABLE TRUST CO.
vs.
SOPHIE FOWLER *et al.* } In Chancery.

In the U. S. Circuit Court of Southern District of Illinois. January Term, A. D. 1883.

The replication of Equitable Trust Company, the complainant, to the joint answer of Sophie Fowler and Edward S. Fowler.

This repliant, saving and reserving to itself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendants, for replication thereunto, says that it will aver, maintain, and prove its bill of complaint to be true,

certain, and sufficient in the law to be answered unto, and that
93 the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

W. L. GROSS,
Solicitor for Complainant.

(Indorsed:) Filed this 7th day of March, A. D. 1883. J. A. Jones, clerk.

Afterwards, to wit, on the twelfth day of March, at the January term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Default of Bond & Johnston & Reference to Master in Chancery.

EQUITABLE TRUST COMPANY
v.
SOPHIE FOWLER, EDWIN S. FOWLER, HENRY R. BOND, and ROBERT P. JOHNSTON. } In Chancery.

94 This day comes the complainant, by William L. Gross, Esq., its solicitor, and the said defendants, Henry R. Bond and Robert P. Johnston, having entered their appearance herein and having failed to file their answer in accordance with the rules and practice of this court, it is therefore ordered and adjudged that the default of said defendants, Henry R. Bond and Robert P. Johnston, be, and the same is hereby, accordingly entered of record and the complainant's bill of complaint be taken *pro confesso* against said defendants.

Whereupon, on motion of complainant, this cause is referred to the master in chancery of this court to take testimony and compute the amount due said complainant and make report thereof to this court.

Then, afterwards, to wit, on the second day of April, in the year last aforesaid, came the master in chancery of said court and filed in the clerk's office of said court his report of amount due in said cause; which said report is in the words and figures following, to wit:

95 *Report of Amount Due.*

In the Circuit Court of the United States for the Southern District of Illinois.

EQUITABLE TRUST COMPANY
v.
SOPHIE FOWLER *et al.*
} In Chancery.

The report of John A. Jones, master in chancery of said court, to whom said cause was referred for computation and report.

Said master, to the hon. judges of said court reports, as follows: That complainant produced before him ten real-estate mortgage bonds, dated February 1st, 1876, and due February 1st, 1881, ea. $1,000 ..... 10,000 00

Int., 10%, after due to April 2, 1883 { 2 years, 2,000 00; 2 months, 166 67; 1 day, 2 77 } 2,169 44

$12,169 44

Cr. admitted by complainant January 30, 1882 ..... 391 83

$11,777 61

Insurance advanced by compl't February 15, '83 ..... $32 50
Interest 1½ months 40
32 90

Solicitor's fee as provided in trust deed 590 53

Total amount due $12,401 04

All which is respectfully submitted to the court.
Dated Springfield, Ills., April 2, 1883.

J. A. JONES, *M. C.*

(Indorsed:) Filed April 2nd, 1883. J. A. Jones, clerk.

96 Then, afterwards, to wit, on the thirtieth day of April, in the January term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Rule on Defendants to Close Testimony.

EQUITABLE TRUST COMPANY
v.
SOPHIE FOWLER *et al.*
} In Chancery.

On motion of complainant, by W. L. Gross, Esq., its solicitor, the defendants are ruled to close their testimony herein by the first Monday of June next.

Afterwards, to wit, on the first day of June, in the January term of said court, and year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Leave to Amend Answer.

EQUITABLE TRUST COMPANY
v.
SOPHIE FOWLER *et al.* } In Chancery.

On motion of defendants, by N. M. Broadwell, Esq., their solicitor, leave is granted to amend their answer herein.

97 And afterwards, to wit, on the second day of June, in the year last aforesaid, came again the defendants, Sophie Fowler and Edwin S. Fowler, and filed in the clerk's office of said court their amendment to their answer herein; which amendment is as follows, to wit:

Amendment to Answer of Sophie & Edwin S. Fowler.

EQUITABLE TRUST COMPANY
vs.
SOPHIE FOWLER *et al.* } In Chancery.

And the said defendants, Sophie and Edwin S. Fowler, come and, by leave of court, amend their answer by inserting the following on third page at end of paragraph closing with the words "or mentioned," to wit:

And these defendants, further answering, say that they applied to said complainant, through its said agent, Johnston, for a loan of $10,000 for 5 years at 9 per cent. interest per annum, and were informed by said Johnston that complainant would make the said loan to defendants on the terms mentioned in said application.

And these defendants aver that afterwards, when they came to make and execute said bonds to secure said loan, it was
98 corruptly agreed by and between them and complainant that the bonds to evidence said loan should be for $10,000, at 7 per cent. interest per annum; that the difference between 7 per cent. and 9 per cent. interest per annum should be evidenced by the promissory notes of defendants not secured by said trust deed, and that defendants should pay said Johnston the sum of $210 for his commissions, and, accordingly, these defendants, being in need of money, closed said business by giving said bonds for $10,000 at 7 per cent. interest and giving their notes for the difference between said 7 and 9 per cent. interest per annum and paying said agency said sum of $210, and these defendants received only the balance of said $10,000, which was and is the sole and only consideration had and received by them for said notes, bonds, and trust deed.

And defendants aver that they have paid said notes so given for

said difference in interest, and that complainant well knew and approved of the business so transacted by said agency.

And these defendants, further answering, say that in and by said trust deed it was, among other things, provided in substance
99 that said trust deed might be foreclosed in a court of equity, and on such foreclosure a fee not exceeding 5 per cent. of the sum found due complainant should be taxed as costs against defendants and paid to the solicitor of complainant out of the proceeds of sale in such foreclosure suit, which said provision, coupled with the commissions paid as aforesaid, renders said loan usurious.

N. M. BROADWELL,
Sol. for Def'ts.

And this defendants, further answering by leave of the court, for paragraph following the above says that said contract for the loan of said money was and is a contract of the State of New York, where the same is payable, and that under the laws of that State the said contract is usurious, the same being for a greater rate of interest than seven per cent. per annum, and defendants here plead and set up the statutes of New York against usury and claims the benefit thereof.

N. M. BROADWELL,
Sol. for Def'ts.

(Endorsed:) Filed June 2, 1883. J. A. Jones, clerk.

100 Afterwards, to wit, on the fifteenth day of October, in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order Appointing Henry W. Taft Spec. Com'r.

EQUITABLE TRUST COMPANY
v.
SOPHIE FOWLER *et al.*
} In Chancery.

It is ordered by the court that Henry W. Taft, of New York, be, and he is hereby, appointed special examiner in the above-named cause to take the evidence of such witnesses as may be produced before him, the same to be taken orally at his office, No. 18 Exchange Place, in said city of New York, by the parties herein in conformity with the rules in equity, and report the same to this court without unnecessary delay; that reasonable notice of the time of taking such evidence shall first be given the respective parties or their solicitors.

Following is the testimony read in evidence on behalf of complainant on the hearing of said cause:

101 In the Circuit Court of the United States for the Southern District of Illinois.

In the matters of—

EQUITABLE TRUST COMPANY *vs.* ROSE H. FOWLER *et al.* } Foreclosure.

EQUITABLE TRUST CO. *vs.* EDWIN S. FOWLER *et al.* } Foreclosure.

and

EQUITABLE TRUST CO. *vs.* SOPHIE FOWLER *et al.* } Foreclosure.

STATE OF NEW YORK, *City and County of New York,* } *ss:*

Henry W. Taft, a notary public within and for the city, county, and State aforesaid, and as such duly qualified to administer oaths, reports and certifies that in pursuance of the annexed order of the circuit court of the United States for the southern district of Illinois, appointing him special examiner in the above-named causes
102 to take and report the testimony of all such witnesses as should be produced before him at his office, in said city of New York, by the parties thereto, and in pursuance of the notice of the complainant to the defendants in said causes, also hereto attached, he did attend at his office, No. 18 Exchange Place, in said city of New York, on the 25th day of October, A. D. 1883, between the hours of 10 and 11 o'clock a. m. of said day, when and where the complainant produced Mr. FREDERICK B. ELLIOTT, a witness on its behalf, who, being by the undersigned first duly cautioned and sworn according to law to tell the truth, the whole truth, and nothing but the truth concerning the matters in controversy in said causes as far as he should be thereunto interrogated, did, in answer to interrogatories to him orally propounded by the counsel of the complainant there attending, Messrs. THOMAS THACHER and WILLIAM L. GROSS (no counsel on behalf of the defendants having appeared or being in attendance), make answer as is below herein written:

Deposition of Frederick B. Elliott.

My name is Frederick B. Elliott. I am fifty-three years old. I reside in the city of New York, and am the president of The
103 Equitable Trust Company, complainant in said causes. My official connection with said company began on the 5th day of August, 1879, as superintendent of the New York office, in which position I continued until the first day of October, 1880, when I became the vice-president of said corporation, which office I held until the month of June, 1882. During said month of June, 1882, I suc-

ceeded to the office of president of said corporation, which office I still hold. From the 4th day of June, 1879, until the 5th day of August, 1879, I was unofficially employed in the office of the Equitable Trust Company, in the city of New York. Prior to said 4th day of June, 1879, I had no connection with said company whatever. I have no personal acquaintance with the defendants Rose H. Fowler, Sophie Fowler, or Henry Davis. I know the defendant Dr. Edwin S. Fowler, and have known him for about—my best impression is that I first met him in the summer or fall of 1879. I should say now that it is quite certain that I had not met him prior to June 4, 1879. I have read the testimony of Dr. E. S. Fowler in these causes.

Some time about the maturity of the $6,000 and the $9,000
104 loans, and, as I think, prior to July 1st, 1879, an arrangement was made by Dr. E. S. Fowler, acting for himself and for the defendant Rose H. Fowler, with the complainant corporation, by the terms of which arrangement, upon condition that all arrearages of interest and taxes were at once paid upon both these loans and that after the maturity of both these loans the interest that thereafter should accrue during such time as these two loans might by the complainant be permitted to run should be paid semi-annually at the same times as were provided by the bonds in both these cases, to wit, May 1st and November 1st, an abatement of two per cent. was to be made in the rate of interest, as expressed in the bonds in these cases, namely, ten per cent. after maturity. No definite time of extension was fixed, but the complainant company was left to exercise its option. It was further understood, however, that if default was made in the payment of such semi-annual interest the defendants should pay the same penalty as was provided in the interest coupons given for interest before maturity, viz., ten per cent. thereon. This arrangement applied solely and alone
105 to the two loans which matured May 1st, 1879, namely, the $6,000 made by Rose H. Fowler and the $9,000 made by E. S. Fowler. Dr. Fowler is certainly mistaken in saying that at any time or place he made an arrangement with me as an officer of the complainant for a reduction in the rate of interest after maturity in the case of the $10,000 loan of Sophie and E. S. Fowler. I am positive that no arrangement was made by Dr. Fowler with myself or with any other officer of the company at any time for reducing the interest on the $10,000 loan after maturity or in any way modifying the terms of the bonds, coupons, notes, and trust deed in that case. Some statements of interest account have been rendered to the defendant Dr. Fowler, tending to show that some reduction in the interest after maturity on the $10,000 loan was to be made. Notwithstanding the statements exhibited by Dr. Fowler in his testimony I am positive that the evidence I have just given is correct. My attention is now especially called to the statement marked "Exhibit A" in the testimony of Dr. Fowler in the case of the Equitable Trust Company against Edwin S. Fowler *et al.* On that statement the rate of interest upon the $10,000 loan to S. & E. S.
106 Fowler appears, where the rate is stated to be 8 %; the amount of interest at each of the dates February 1st, 1880,

August 1st, 1880, and February 1st, 1881, is stated to be $450. It is evident that the rate is incorrectly stated as at 8 %, and that the extension at $450 in each case is correct. This loan matured February 1st, 1881, and these three installments of interest are interest before maturity and were represented by coupons and interest notes. The coupons and interest notes for each of these three dates amounted to $450. This statement, "Exhibit A," was sent to Dr. Fowler enclosed with a letter, a copy of which I produce and here attached, marked Exhibit "1." My attention is also called to the statement marked Exhibit "E" in the testimony of Dr. Fowler in the case of the Equitable Trust Company against Rose H. Fowler. That statement I believe to be entirely correct. It was prepared because on July 1st, 1881, the company received from Dr. Fowler $3,863.95, transmitted in his letter of June 29, 1881, which I here produce, and the same is marked Exhibit "2" and attached hereto, and the amount so received was not what we claimed to be due in accordance with our previous statement and letter just referred to,
107 but was less by $229.80. This statement, Exhibit "E," in the Rose H. Fowler case, was sent to Dr. Fowler on July 1st, 1881, enclosed with a letter, of which a copy I now produce, and it is marked Exhibit "3" and attached hereto. My attention is also called to the statement marked Exhibit "A" in the testimony of Dr. Fowler in the case of Equitable Trust Company *vs.* Sophie Fowler *et al.*, the statement bearing date August 14, 1882. I am unable to tell why this statement was so made. It must have been through a mistake or misapprehension of the person who prepared it. There was no basis for making any such statement. It was not in accordance with any agreement or understanding. This statement is incorrect in many particulars. The first three items of interest are correct. The amount of the principal is correctly stated. The credits are correct, otherwise the statement is wrong. Exhibit "A" in the testimony of Dr. Fowler in the case of The Equitable Trust Company *vs.* Rose H. Fowler has also been shown to me. It is a duplicate of the statement to which I have already referred, which is marked Exhibit "E" in the same case. This duplicate was sent to Dr. Fowler enclosed with my letter of
108 August 15, 1881, a copy of which I produce, and the same is marked Exhibit "4." In answer to a call by the counsel for the complainant for letters to and from Dr. Fowler bearing upon the questions in controversy in these causes I produce a letter from Dr. Fowler, dated June 6th, 1881; the same is marked Exhibit "5" and attached hereto; also letter of Dr. Fowler, dated August 9, 1881; the same is marked Exhibit "6" and attached hereto; also letter of Dr. Fowler, dated July 9th, 1882; the same is marked Exhibit "7" and attached hereto; also letter of Dr. Fowler, dated July 11, 1882; the same is marked Exhibit "8" and attached hereto; also letter of Dr. Fowler, dated July 18th, 1882; the same is marked Exhibit "9" and attached hereto; also letter of Dr. Fowler, dated July 25th, 1882; the same is marked Exhibit "10" and attached hereto; also copy of letter to Dr. Fowler, dated October 7th, 1880; the same is marked Exhibit "11" and attached hereto; also copy of letter to Dr.

Fowler, dated June 4th, 1881; the same is marked Exhibit "12" and attached hereto; also copy of letter to Dr. Fowler, dated July 26th, 1881; the same is marked Exhibit "13" and attached hereto; also copy of letter to Dr. Fowler, dated September 16th, 1881,
109 and the same is marked Exhibit "14" and attached hereto; also copy of letter to Dr. Fowler, dated Nov. 4th, 1881; the same is marked Exhibit "15" and attached hereto; also copy of letter to Dr. Fowler, dated Nov. 30, 1881; the same is marked Exhibit "16" and attached hereto; also copy of letter to Mrs. Dr. Fowler, dated July 8th, 1882; the same is marked Exhibit "17" and attached hereto; also copy of letter to Dr. Fowler; the same is marked Exhibit "18" and attached hereto, dated July 21st, 1882.

On the 30th day of September, 1879, the complainant company rendered to Dr. Fowler a statement of account of interest on all three of the loans, exclusive of interest on the two matured loans after maturity, a copy of which statement of account is here attached, marked Exhibit "19." On the same day Dr. Fowler paid the complainant $2,057.50, which was the full amount as shown by the statement Exhibit "T." This payment was apportioned—

Edwin S. Fowler loan	$672 00
R. H. Fowler loan	448 00
S. & E. S. Fowler loan	937 50

110 After this payment there remained unpaid on the $10,000 loan the principal and interest from August 1st, 1879; on the $9,000 loan and the $6,000 loan, which matured May 1st, 1879, the principal and the interest after such maturity.

On the 1st day of July, 1881, Dr. Fowler paid to the complainant on account of past-due interest $3,863.95, which was apportioned as follows:

E. S. Fowler loan	$1,391 02
R. H. Fowler loan	927 35
S. & E. S. Fowler loan	1,545 58

And on the 30th day of January, 1882, Dr. Fowler paid on account of interest on these three loans the sum of $800, which was apportioned as follows:

E. S. Fowler loan	$288 00
R. H. Fowler loan	192 00
S. & E. S. Fowler loan	320 00

At the time of said payments, to wit, July 1st, 1881, and January 30, 1882, so far as I know, no direction*ed* was received by the complainant or given by Dr. Fowler as to how they should be apportioned. The three payments above specified, viz., of September 30th, 1879, of July 1st, 1881, and of January 30th, 1882, are the only payments made by the defendants or either of them on account
111 of these three loans since the maturity of either of these loans.

My attention is now especially called to the note at the foot of the three statements rendered by the complainant to the defendants respectively, dated August 14th, 1882, where it is stated: "In-

terest to be added @ 8% to all items from their date to date of settlement." This foot-not- was not in conformity with any arrangement or agreement between the complainant and the defendants or either of them, although at the date of these statements, August 14th, 1882, had the defendants paid the arrears of interest as thereon shown, as we had a right to expect from Dr. Fowler's letters of July 18th, 1882, Exhibit "9," and July 28th, 1882, Exhibit "10," the complainant would, under the circumstances, doubtless have made that further concession; but, however, no payments have been made by the defendants or either of them since the rendering of those accounts on account of these loans.

The examination was at this point adjourned to Friday, October 26th, 1883.

112 The examination of Mr. FREDERICK B. ELLIOTT was resumed on the last-named date. He testified as follows:

My attention is called to the statement of Dr. Fowler in these cases as to Johnston's relations with the company. At the time when these loans were made I was not connected with the Equitable Trust Company, and certainly had no knowledge as to the relations which R. P. Johnston had, if any, with the company. I never made any statement to Dr. Fowler as to Johnston's authority in respect to the negotiation of either of these loans. I had no knowledge about it. What I may have said in 1879 or 1880 about Johnston's relations then to the company I cannot now tell. These loans were made long before my connection with the company began. Jonathan Edwards, who was then president of the company, died on May 30th, 1882. John Rockwell, who is referred to in Dr. Fowler's testimony, is not now connected with the company, and I do not think he is in the city. Henry R. Bond is not in this State.

I produce, upon call of the counsel for complainant, an exemplified copy of the charter of the Equitable Trust Company, which is marked Exhibit "20" and attached hereto.

113 The complainant in these cases is the legal and equitable owner of all the bonds exhibited and filed therein.

FREDERIC B. ELLIOTT.

And I, Henry W. Taft, do further report and certify that the testimony of said witness, Frederic B. Elliott, as above reported, was by me reduced to writing and was subscribed by said Frederic B. Elliott, after having read the same, in my presence.

Given under my hand, at the city of New York, this 27th day of October, A. D. 1883.

HENRY W. TAFT,
[L. S.] *Special Examiner.*

EXHIBIT "1."

N. Y., *June* 9, 1881.

Mr. Edwin S. Fowler, Springfield, Ill.

DEAR SIR: Your personal letter of the 6th to the writer came duly to hand, and we are gratified to learn that you have made such

arrangements as will avert foreclosure proceedings in the three cases referred to.

114 In conformity with your request we inclose a memorandum of the interest now in default in each case, amounting, respectively, to $1,140, $960, and $1,350. To each separate item of interest there should be added the penal interest of ten per ct. from the due date until the money is in this office. This of course we cannot compute, because we do not know when you will be able to pay. We leave it for your computation.

Respecting your inquiry as to extending your loans for a term of years, we should be prepared to discuss these when the matter of interest is out of the way. It seems to us rather too premature at present. We think you will agree with us that we had better arrange one thing at a time. We are glad on your account as well as on our own that you are likely to be rid of a troublesome load, which must have been very annoying to you for several years, and we congratulate you that the end is approaching. We shall expect to hear from you in the course of a few days with a remittance.

Very truly yours,

(Signed) F. B. ELLIOTT, *Vice-Pres.*

115 EXHIBIT "2."

SPRINGFIELD, ILL., *June 29th*, 1881.

F. B. Elliott, Esq.

DEAR SIR: My trade was closed yesterday, but too late to get a draft before the banks closed. Inclosed please find draft on N. Y. for $3,863.95 in full for interest compounded at 8%. In the statement you sent me there was a mistake made on the $10,000, which you calculated at 8%, which would be $400 semi-annually instead of $450. Please send me the vouchers for the int. in full of all three loans up to July 1st, as I have calculated it up to that time. I thank you for your indulgence in this matter. Now, as to the rate you will charge in the future, let me know the lowest you can carry it for. The taxes are all paid on each piece of property. It will be a year before we hear anything more of taxes.

Yours very truly, EDWIN S. FOWLER.

116 EXHIBIT "3."

N. Y., *July 1st*, 1881.

Dr. E. S. Fowler, Springfield.

DEAR SIR: You are entitled to some congratulation upon your relief from a great burden, as it must have been, of interest & taxes on your mortgages & property, and it is a satisfaction to us to have had your remittance to-day, which you had heralded by wire recently.

We regret, however, to be obliged to point out some errors in your computations, which we think would have been avoided had you followed the memorandum of the ac. which we sent you on June 9th. We have consequently made up a new, complete statement

to-day, which we inclose, showing you still in our debt $229.80. The discrepancy is occasioned by your having allowed but 8% interest on the loan of $10,000, which matured on Feb. 1, '81, and which carried 9% interest, and by your having computed the penal interest on all three at 8% after default instead of at 10%, according to the terms of the bonds and mortgages. Will you oblige us by remitting this additional amount at once to enable us
117 to completely close these accounts to date.

Very truly yours,
(Signed) F. B. ELLIOTT.

P. S.—You will see by reference to our letter of 9th ulto. that all was clearly set forth therein.

EXHIBIT "4."

N. Y., *Aug. 15th*, 1881.

Dr. E. S. Fowler, Springfield, Ill.

DEAR SIR: We are in receipt of your favor of the 9th from Chicago, explaining the error which you made in the calculation of your account with us, and asking us to send you a careful and full statement of our claim. You also enquire what we propose to do for the future.

Our letter of July 26th, which you acknowledged, went into full particulars of how you came to make an error in the computation of interest. We have already sent you a full statement of account, which was also explained in detail, but for fear you have mislaid it we inclose a copy and explain once more.

118 The loan of R. H. Fowler was continued after maturity by consent at 8 %. The loan of E. S. Fowler was continued after maturity also at 8 %. The loan of S. & E. S. Fowler meanwhile had not matured and did not until the first of Feb'y of this year. That loan bore 9 % up to that time. All these loans by their terms bear ten per cent. penal interest upon all defaults. Hence it was and is that we make the account up in that manner. You have made it at 8 % only upon the defaults. You have also computed interest on the S. & E. S. Fowler loan as though that carried eight per cent. instead of nine. The account therefore shows that you still owe us $229.80 up to July 21st.

After a full and careful consideration and consultation respecting the future we have decided to say to you that we desire you to make arrangements to pay us off the whole of these loans. But this decision is in no manner a reflection upon the very agreeable personal arrangements which have always subsisted between us. We shall be glad to know how soon you will be able to arrange to borrow the money elsewhere and close the matter. The only other open question remaining would be what rate of interest the S. & E. S.
119 Fowler loan, which matured on February 1st, 1881, should carry. But we shall not be disposed to be very technical about it if the matter is closed up promptly. By its terms it bears 10 %.

Very truly yours,
(Signed) F. B. ELLIOTT, *V. P.*

EXHIBIT "5."

SPRINGFIELD, ILL., *June 6th*, 1881.

F. B. Elliott, Esq.

MY DEAR SIR: Yours of the 4th inst. is just rec'd. Since my return from N. Y. I have been at work to arrange to pay your interest and the taxes now due. I could have forced property to sale at a low figure, but did not do it, and only to-day concluded the sale, so that if you will send to your agent the amount I will pay him and close the whole thing up, interest and taxes, as well as for Mrs. Rose Fowler.

I regret that I should have caused you any disappointment and am under many obligations to you for your kindness and consideration. You will not need to proceed to foreclosure. Now,
120 let me know, also, at what rate you will make these loans for a term of years, and oblige,

Yours very sincerely, EDWIN S. FOWLER.

EXHIBIT "6."

CHICAGO, *Aug. 6th*, 1881.

F. B. Elliott, Esq.

DEAR SIR: I have been absent from home for about a month and arrived here this week, where I find yours of the 26th, having been forwarded to me.

Now, I made the calculation of the interest at 8 %, as we agreed, and then I compounded it at 8, and if there is any mistake I will rectify it. I wish, therefore, you would make a careful and full account of your claim and let me have it at once. You do not say anything about the future, though I have requested you to do so. Let me hear from you fully. I will probably be at home next week.

Resp'y yours, EDWIN S. FOWLER.

121 EXHIBIT "7."

SPRINGFIELD, *July 9th*, 1882.

Mr. F. B. Elliott.

DEAR SIR: As you are aware, I have been sick for some time. Indeed, so sick as to be unable to attend to any business, having an attack of erysipelas in Chicago which kept me there for about 3 months. I am now entirely recovered and am attending to business and had expected to send you the interest due 2 or 3 weeks since. Mrs. Wm. Fowler is about to sell her house, when that debt will be paid. If it is not sold soon it will at least be reduced. I am under renewed obligations to you for your kindness in waiting and ask you to be patient a little longer, when I will fix these matters satisfactorily.

Yours very truly, EDWIN S. FOWLER.

EXHIBIT "8."

SPRINGFIELD, *July* 11*th*, 1882.

Mr. F. B. Elliott.

122 DEAR SIR: Yours of the 8th came this morning. I wrote you on the 9th, telling you I would remit to you very soon and gave the reasons for the delay. Had it not been for my recent severe and protracted illness the interest would have been paid promptly.

I have only recently recovered so as to attend to business and will remit to you very soon. Please let me know how the account stands now.

Yours resp't'y, EDWIN S. FOWLER.

EXHIBIT "9."

SPRINGFIELD, ILL., *July* 18, 1882.

Mr. B. F. Elliott.

MY DEAR SIR: I wrote you on yesterday week and a week ago to-day on receipt of your letter of the Saturday previous, to which I have no reply.

To-day I was informed by Mr. W. L. Gross, an att'y, that he was instructed by your att'y to begin proceedings to foreclose on both my loans, as well as Mrs. Wm. Fowler's. I am very unhappy
123 to learn that such is the case. A year ago I paid for the interest on all these loans except the difference made in the calculations of about $229. On last January 30th I paid you $800 int., and expected to see you again before I left N. Y., but was called suddenly to Chicago by telegraph on important business, and therefore did not see you again as I expected, but was taken seriously ill there, which for three months prevented my doing any business or even seeing a business letter; this, of course, threw me behind in business matters, and then the taxes on all this property was due, and I paid them. Now, I expected in a very few days to remit to you the interest due, and have been working to that end. We have negotiations on hand looking to sale of Mrs. Rose H. Fowler's property, on which for four or five years I have been paying interest and taxes, and can sell it, but, of course, if we force it it will be at a low price. As she is a widow with three little girls to provide for, I have been carrying this property with the hopes of not allowing their home, their all, to be sold from them and they left penniless. Now I am amply able to pay their debts, but it takes some time to get them arranged, and if you insist on push-
124 ing matters to the extreme by foreclosure proceedings it will seriously emba-rass me and cause me to make very great sacrifices, which I cannot think you desire to do. I hope, therefore, you will discontinue the proceedings and allow me to pay the interest; then I will either pay the R. H. Fowler loan or a part of it, and if you want me to pay mine also I will arrange to do it in a year with-

out any legal proceedure. I don't think I ask an unfair thing or make an unbusiness proposition in doing so. I think when you look the matter over you will come to the same conclusion. I will be glad to hear from you fully on receipt of this.

Yours very truly, EDWIN S. FOWLER.

EXHIBIT "10."

SPRINGFIELD, *July* 25, 1882.

Mr. B. F. Elliott.

DEAR SIR: Yours of the 21st is rec'd; also one from your treas., of the 18th July, in which he says he incloses a statement of
125 the different accounts, but he must have forgotten to enclose them. You ask me to say when I will pay the arrear dues & when, if *at* all, I will make a payment on acc't of principal. I will pay the interest within 30 days; a part of the principal, I think, I can pay within a few months. We have recently advertised the rear end of Mrs. Wm. Fowler's lot for sale; it is 332 feet deep, and we propose to sell 130 feet of it, and reduce the debt that much; this will leave her 152 feet front by 202 feet in depth, with the house and all the improvements. Now, how soon this sale can be made I can't tell; but it is now advertised and we will sell it certainly within a year. I will pay a part of my principal or all of it, as you may desire. I have some property I am trying to sell and it is simply a question of sacrificing it if I force a sale; but I am as anxious as you can be to get these matters in shape.

Very truly yours, EDWIN S. FOWLER.

EXHIBIT "11."

N. Y., *Oct.* 7, 1880.

Dr. E. S. Fowler, Springfield, Ill.

126 DEAR SIR: We have been expecting for a long time to see you in our office. We learned from a recent call by the writer at your office, in this city; that you had gone to Springfield for an indefinite time.

The interest on the loan of $6,000 to Rose H. Fowler is in arrears two installments of $240 each, and the loan to yourself of $9,000 is in arrears two installments of $360 each for November 1st, 1879, and May 1st, 1880, respectively, with penal interest. Both of these loans are overdue and, at your request and for your accommodation, have been allowed to remain in an anomalous condition, with the understanding that the interest should be promptly paid.

The interest on the loan of E. S. & Sarah Fowler for $10,000 is also in arrears two installments of $450 each for Feb'y 1st, 1880, & Aug. 1st, 1880, with penal interest thereafter.

You will readily understand why this state of things is very unsatisfactory to us and why we cannot consent to go on in this way. We wish you to take immediate measures to remit this interest to us.

Very truly yours,

(Signed) B. F. ELLIOTT,
Vice-President.

127 EXHIBIT "12."

N. Y., *June 4th*, 1881.

Dr. Edwin S. Fowler, Springfield, Ill.

DEAR SIR: We exceedingly regret that your course respecting the interest on your loans of us has constrained us to prepare the papers for our counsel in order that foreclosure proceedings may be had. We must adopt the same course toward the loan to Rose H. Fowler. We should like to know whether any taxes are in arrears.

Your ob't serv't,

(Signed) F. B. ELLIOTT, *V. P.*

EXHIBIT "13."

N. Y., *July 26th*, 1881.

Dr. E. S. Fowler, Springfield, Ill.

DEAR SIR: We addressed you on the first instant in respect to a miscomputation on your part of the interest on your three loans (for which you remitted us on the 29th ultim.) and have received no reply from you.

128 It has occurred to us that probably, in view of the large payment which you made us at that time, it may have seemed ungracious or unreasonable on our part to raise this question, but we beg you to understand that in such matters we are acting only in a fiduciary capacity for stockholders, whose interests we are bound to care for. Upon a reference once more to our statement rendered you early in June, we find one cause of your mistake to have been an inadvertence of ours in writing "eight per cent." instead of nine per cent. against the loan of S. & E. S. Fowler, although the resulting figures were correctly carried out at nine per ct. The loans of E. S. & R. H. Fowler have been continued, by consent, after expiration at 8 %, but the loan of S. & E. S. Fowler did not mature until the first of Feb'y, '81, and of course that carried interest at the rate originally contracted, namely, nine per ct. Our statement of July 1st, rendered you, showing a debit of $229.80, was a correct one.

Will you have the goodness to close this matter up with us without delay. We await your early reply.

Very truly yours,

(Signed) F. B. ELLIOTT, *Vice-Pres.*

129 EXHIBIT "14."

N. Y., *Sep.* 16, 1881.

Dr. E. S. Fowler, Springfield, Ill.

DEAR SIR: Allow me to call your attention to our letter to you of Aug. 15th, to which we have as yet no reply. Please give it as prompt consideration as possible. Awaiting your response, we remain,

Very truly yours,

(Signed) HENRY R. BOND, *Sec'y.*

EXHIBIT "15."

N. Y., *Nov. 4th*, 1881.

Dr. E. S. Fowler, present.

DEAR SIR: We are desirous of reaching some understanding in regard to your overdue loans, and will be pleased to have you call and see us at your earliest opportunity to-day, if possible.

Very truly yours,

(Signed) EDWIN S. MARSTON,
Ass't Sec't'y.

130 EXHIBIT "16."

N. Y., *Nov. 30th*, 1881.

Dr. Edwin S. Fowler, Hotel Brunswick, N. Y.

DEAR SIR: We have addressed several communications to you respecting the loans of E. S., R. H., & S. & E. S. Fowler, all overdue, upon which the interest is again becoming delinquent. Receiving no reply, we have decided upon foreclosure and have handed the papers to our counsel, with instructions to commence proceedings on Dec. 15th. If you wish to arrest this you must move quickly in the matter.

Very truly yours,

(Signed) HENRY R. BOND, *Sec't'y.*

EXHIBIT "17."

N. Y., *July 8th*, 1882.

Mrs. Dr. E. S. Fowler, Springfield, Ill.

MADAM: As nothing has been done looking to the payment of our three loans, we have to-day placed the papers in each in
131 our counsel's hands with instructions to initiate foreclosure proceedings at once.

Very truly yours,

(Signed) F. B. ELLIOTT, *President.*

EXHIBIT "18."

N. Y., *July* 21, 1882.

Dr. Edwin S. Fowler, Springfield, Ill.

DEAR SIR: We are in receipt of yours of the 18th inst. reciting what you had expected to do in the matter of your loans and that of Mrs. Rose H. Fowler, begging us to discontinue the proceedings which we have been constrained to take, pleading with us in behalf of a widow and three little girls who would be left penniless and now promising to pay up your interest and the whole or part of Mrs. Fowler's loan and asking a year in which to pay your own loans, and then saying you do not think you ask an unfair thing or make an unbusiness-like proposition.

To the writer's knowledge, for more than three years past the officers and messengers of this company have been running after
132 you to an office in Broadway or to an expensive and fashionable hotel uptown and writing you dunning letters there and to Springfield because of the chronic and persistent delinquency on your part in the payment of your interest, and more lately in your disregard of our wishes that a reduction should be made on the principal of the loans, or else that they should be paid off. There is not a borrower in the whole range of our business, nor ever has been that we recall, who has had such long and good-natured indulgence as we have granted to you, and it is only because our patience has become entirely exhausted that we have finally taken the steps we have. We have no desire to oppress you or Mrs. Rose Fowler, but we intend to take care of ourselves before things, which seem to be going from bad to worse, become irreparable. We have been exceedingly sorry to hear of your serious illness, but you must permit us to remind you that your delinquencies existed even while you were in good health.

Now, what we have been trying of late to accomplish has been the payment of arrearages on all three loans, and, if not the loans, at least a reduction of $2,000 on account of the principal of each.
133 Without knowledge of your means or facilities we have feared that this demand for reduction on account of principal as well would not be practi-ble for you, and we have therefore presumed that the course open to you was to effect new loans or mortgages on all these properties and pay ours. Two of the loans have been long overdue and the other has more recently matured, and in all ways the whole account has been in an irregular condition.

If you say, in reply to this letter, when you will pay these arrearages, and when, if at all, you will make a payment on account of principal, as first proposed, we will let you know whether it is satisfactory. Pending your prompt reply we will stop proceedings.

Very truly yours,

(Signed) F. B. ELLIOTT, *President.*

EXHIBIT "19."

SEP. 30, '79.

Edwin S. Fowler in acc't with the Equitable Trust Co., Dr.

			10 % interest.
1878.			
Nov. 1.	To 6 mos.' int. on loan	315 00	28 87
1879.			
May 1.	" " " " " "	315 00	13 13
Sep. 30.	" int. on items of ac.	42 00	
			672 00

134 Loan, $6,000.

R. H. Fowler in acc't with the Equitable Trust Co., Dr.

			10 % interest.
1878.			
Nov. 1.	To 6 mos.' int. on loan	210 00	19 25
1879.			
May 1.	" " " " " "	210 00	8 75
Sep. 30.	" int. on items of ac	28 00	
			448 00

Loan, $10,000.

S. & E. S. Fowler in acc't with the Equitable Trust Co., Dr.

1879.			
Feb. 1.	To 6 mos.' int. on loan	450 00	30 00
Aug. 1.	" " " " " "	450 00	7 50
Sep. 30.	" int. on items of ac	37 50	
			937 50

STATE OF CONNECTICUT:

[Seal.] Qui transtulit, sustinet.

OFFICE OF SECRETARY OF STATE.

Incorporating the Ocean Trust Company.

Resolved by this Assembly:

SECTION 1. That Elias F. Morgan, Albert N. Ramsdel, Henry P. Haven, William H. Barnes, Augustus Brandegee, Richard H. Chappell, Benjamin Stark, Robert Coit, Jr., Henry R. Bond, with all others who may become associated with them as stockholders,
135 as hereinafter provided, be, and they hereby are, with their successors and assigns, created and established a body corporate and politic by the name of the Ocean Trust Company, and by that name shall be capable in law to purchase and hold all kinds of property, real, personal, and mixed, and the same at pleasure to lease, hold, and convey; to sue and be sued, to plead and be impleaded, in all courts; to have and use a common seal, and the same to alter at pleasure; to make and carry into effect all such by-laws and regulations as may be deemed expedient for the proper management of the affairs of the corporation not repugnant to its charter, the laws of this State or of the United States, and generally to do and cause to be done and executed all such acts and things as may seem necessary and proper within the limitations aforesaid.

SEC. 2. The corporation hereby created shall also have power to receive money in trust and on deposit, and to allow and pay interest on said money, and to loan the same at any rate of interest allowed

by law; may take and receive on deposit or in custody for
136 safe keeping bonds, plate, jewelry, stocks, and other valuable property upon such terms and for such compensation as may be agreed upon by the said corporation and by the depositors respectively of any such property aforesaid; may accept and execute all trusts, whether fiduciary or otherwise, as shall or may be committed to said corporation by any person, persons, or party or by the order or direction of any court or tribunal or any legally constituted authority in the State of Connecticut, upon security thereinafter provided for the fulfillment of such trust; and may make such special regulations in reference to trusts, funds, deposits, or savings left for accumulation or safe keeping as shall best aid the said depositors or parties interested by accumulating or increasing the same, allowing and receiving such interest therefor, not greater than that hereinafter specified, as may be agreed upon.

SEC. 3. In all cases when an application shall be made to any court having jurisdiction for the appointment of a guardian of an infant or the receiver of any estate such court shall have power to appoint said corporation such receiver or the guardian
137 of the estate of such infant upon the security herein provided for the fulfillment of said trust; and said corporation, in respect to such trusts as shall be committed to it by any court or tribunal under the provisions of this act, shall be subject to all such orders and decrees as said court shall make and pass in respect thereto and to the investment thereof; and shall be liable to account at such time or times and in such way or manner as said court or tribunal shall from time to time direct.

SEC. 4. It shall be lawful for the corporation hereby created to take and hold any real or personal estate, in trust or otherwise, as security for and in payment of loans and debts due or to become due to the said company; to purchase real estate or any other property at any sale made in virtue of any loan, debt, or mortgage made or held by said company, and to receive or take in satisfaction of any such loan or debt any real estate or other property, and to hold, lease, and convey the same at pleasure.

SEC. 5. All the capital stock, property, and estate of every
138 kind belonging to said company shall be and stand charged with the fulfillment of said trusts and the payment of said deposits and said trust and other funds as the first and prior lien thereon, in case of the failure of said corporation.

SEC. 6. The capital stock of said company shall not be less than one thousand shares of one hundred dollars each, with the privilege of increasing the same by a vote of the trustees to any number not exceeding ten thousand shares in the whole, which shall be transferable according to such rules as may be established by the trustees of said company. At the time of subscribing for the capital stock of said company there shall be paid in ten dollars on each share thereof, and the remaining ninety dollars per share shall be paid into the treasury of said corporation, as required by the trustees, in and by a call published in one or more *more* newspapers published in the city of New London, and every subscriber who shall neglect

to pay said residue of each share by him or her subscribed in the manner aforesaid shall forfeit to said corporation his or her share or shares and all payments made thereon, together with
139 the profits that may have accrued thereon.

And said corporation shall not commence the business authorized in the second section of this act until all the capital stock is subscribed for and taken and at least one hundred thousand dollars is paid in and the balance, if any, paid or secured to be paid either by a first mortgage or mortgages of real estate of the value of one-quarter more than the amount to be secured, or by the pledge of the bonds of the United States or of the several States, or either of the incorporated cities of this State, of at least equal value with the capital so secured.

SEC. 7. To carry out the provisions of this charter and to organize the said corporation Henry R. Bond, Elias F. Morgan, and Augustus Brandegee, and, in case of the disability of either of them, then any two of them, are authorized and appointed to receive subscriptions to the capital stock thereof and the payment of the first installments thereon; and when one thousand shares of said stock shall have been subscribed for and the first installment has been paid thereon, upon call of the said Henry R. Bond,
140 Elias T. Morgan, and Augustus Brandegee (or in case of the disability of either of them, then of the other two), by notice published in a newspaper printed in New London ten days before the time of meeting, the subscribers may meet at the time and place named in said call for the purpose of choosing trustees, who when chosen shall continue in office until the annual meeting of the stockholders, which shall be held on the first Wednesday in June in each year, or on such other day in the month of June as shall be determined by the by-laws of said corporations and until others are chosen in their room.

SEC. 8. All the affairs of said company shall be managed and controlled by a board of not less than five nor more than ten trustees, at least three of whom shall be residents of the city of New London, who shall be chosen by ballot solely from among and by the stockholders in general meeting. The trustees may choose one of their number for president, and whenever the place of president or trustee shall become vacant, by resignation or otherwise, may fill
141 the vacancy from among the trustees or other stockholders for the remainder of the year. The trustees may appoint a vice-president, treasurer, secretary, or such other officer or agents as may be deemed necessary for performing the business of said corporation, fix their compensation, and determine the nature and amount of the securities to be given by any of them for the faithful performance of their duties. All elections for president or trustees shall be by ballot, and said trustees shall determine how many of their own body shall constitute a quorum for the transaction of business.

SEC. 9. Special meetings of the stockholders may be called whenever the board of trustees shall judge proper, and at least five days' notice of any general special meeting shall be given in some newspaper printed in the city of New London or in such other manner

as the trustees may order; and at any meeting of the stockholders all questions shall be determined by a majority of votes, allowing one vote to each share; and said stockholders shall be entitled to vote in person or by proxy duly appointed.

142 SEC. 10. It shall be the duty of the president and treasurer of said corporation annually, on the first day of January or within thirty days thereafter, to make out, under oath, and deliver to the controller of public accounts a statement of the amount of the capital stock, the amount paid in, the amount of money held in trust or on deposit with them, and generally the assets and liabilities of said company, which said statement shall be entered at length by the controller of public accounts in a book kept for that purpose.

SEC. 11. This act may be altered, amended, or repealed by the General Assembly at its pleasure.

Approved June 19th, 1869.

Amending the Charter of the Ocean Trust Company, New London.

Resolved by this Assembly, That the resolution incorporating the Ocean Trust Company, passed May session, A. D. 1869, be amended by adding to the first section and at the close of the same the

143 following words: Provided, that the office and place of business of said company shall be in the city of New London, and shall not be located elsewhere, except by resolution of the General Assembly.

Approved July 6th, 1870.

Changing the Name of the Ocean Trust Company.

Resolved by this Assembly, That the name of the Ocean Trust Company of New London be, and the same is hereby, changed to that of the Equitable Trust Company of New London, and that the board of trustees of said company shall consist of not more than twenty-five persons, who shall be chosen from the stockholders of said company by ballot, in the manner heretofore provided by the charter of said company.

Approved June 22, 1871.

An Act Amending the Charter of the Equitable Trust Company of New London.

144 Be it enacted by the senate and house of representatives in General Assembly convened:

SEC. 1. That the Equitable Trust Company of New London be, and hereby is, authorized to increase its capital stock to an amount not to exceed twenty thousand shares, of the par value of one hundred dollars each, said stock to be subscribed for, held, and paid in the manner provided in its charter.

SEC. 2. That said company is hereby authorized to elect ten trustees in addition to the number and in the manner now provided by law, and may have such offices and agencies in other States as may be necessary for the transaction of its legitimate business: Provided,

that the office, books, and records of said company shall be kept at New London, in this State, and be at all times open and subject to the inspection of the bank commissioners.

SEC. 3. Said company may take such securities for loans as are now authorized by its charter, in such form, and may sell and dispose of the same in such manner as it may determine, and
145 may guarantee the paypent of the principal and interest of such securities.

SEC. 4. All authority or permission given in the charter of said company to receive fiduciary or trust funds from any person or by order of any court in this State, belonging to persons in this State, or to act as guardian to the property of minors in this State, is hereby repealed.

SEC. 5. This act shall take effect from its passage.

STATE OF CONNECTICUT, *ss:*

OFFICE OF SECRETARY OF STATE.

I hereby certify that the foregoing is a true copy of record in this office.

In testimony whereof I have hereunto set my hand and
[L. S.] affixed the seal of said State, at Hartford, this 4th day of June, A. D. 1879.

DAVID TORRANCE,
Secretary of State.

146 In the Circuit Court of the United States for the Southern District of Illinois.

MONDAY, *October 15th, A. D.* 1883.

Present: Hon. Samuel H. Treat, district judge.

EQUITABLE TRUST COMPANY
v.
ROSE H. FOWLER *et al.* } Foreclosure.

EQUITABLE TRUST COMPANY
v.
EDWIN S. FOWLER *et al.* } Foreclosure.

EQUITABLE TRUST COMPANY
v.
SOPHIE FOWLER *et al.* } Foreclosure.

It is ordered by the court that Henry W. Taft, of the city of New York, county and State of New York, be, and he is hereby, appointed special examiner in the above-named causes to take the evidence of such witnesses as may be produced before him, the same to be taken orally, at his office, No. 18 Exchange Place, in said city of New York, by the parties herein, in conformity with the rules in
147 equity, and report the same to this court without unnecessary delay; that reasonable notice of the time of taking such evidence shall first be given the respective parties or their solicitor.

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

I, J. A. Jones, clerk of the circuit court of the United States in and for the southern district of Illinois, do hereby certify the foregoing is a true and correct copy of the order appointing Henry W. Taft special examiner in the three foregoing-entitled causes as the same appears of record in my said office.

In witness whereof I have hereunto set my hand and [L. S.] seal of said court, at Springfield, in said district, this fifteenth day of October, A. D. 1883.

J. A. JONES, *Clerk.*

In the United States Circuit Court for the Southern District of Illinois.

In the matter of—

EQUITABLE TRUST COMPANY *vs.* ROSE H. FOWLER *et al.* } Foreclosure.

148 EQUITABLE TRUST CO. *vs.* EDWIN S. FOWLER *et al.* } Foreclosure.

and

EQUITABLE TRUST CO. *vs.* SOPHIE FOWLER *et al.* } Foreclosure.

To Hon. N. M. Broadwell, solicitor for above-named defendants:

Please take notice that on Thursday, the 25th day of October, A. D. 1883, between 10 & 11 o'clock a. m., the complainant in the above-entitled causes will proceed to take the evidence of sundry witnesses then to be produced in its behalf, the same to be taken orally before Mr. Henry W. Taft, at his office, No. 18 Exchange Place, in the city of New York, county & State of New York, a special examiner appointed by the court for that purpose, when & where you are invited to attend & cross-examine such witnesses as may be examined, if you shall see fit.

Respectfully,

WM. L. GROSS,
Solicitor for Compl't.

Dated Oct. 15th, 1883.

Rec'd a copy of the foregoing notice this 15th day of Oct., 1883.

N. M. BROADWELL,
Solicitor for Def'ts.

Filed Oct. 15, 1883.

J. A. JONES, *Clerk.*

(Indorsed:) Filed November 1st, 1883. J. A. Jones, clerk.

149 *Deposition of Robert P. Johnston.*

In the Circuit Court of the United States for the Southern District of Illinois.

EQUITABLE TRUST COMPANY
vs.
SOPHIE FOWLER *et al.* } In Chancery.

Testimony of Robert P. Johnston, taken before John A. Jones, master in chancery of said court, at his office, in the city of Springfield, on September 27th, 1883.

ROBERT P. JOHNSTON, being first duly sworn, deposes and says:

About January 19, 1876, the defendant Sophie Fowler made written application to the complainant, which is here exhibited, marked Exhibit G. This I forwarded to the complainant in New York for its acceptance or rejection, and afterwards, subject to the modifications as shown by the bonds and trust deed in this case, was accepted by the complainant. Accordingly the ten $1,000.00 bonds were prepared for execution and bore date February 1st, 1876. They were not finally executed and completed until Febru-
150 ary 8th, 1876, on which day they were delivered. The par value of the bonds on that day was $10,000.00. To this was added the interest at 9 per cent. from February 1st to February 8th, 7 days, 17.25—$10,017.25. This is specifically shown by the statement prepared by me on that day and which is here exhibited, marked "Exhibit H."

This was a loan of $10,000.00 for five years at nine per cent. interest. Seven per cent. of this interest was secured by coupons attached to the bonds, while the remaining two per cent. was evidenced by independent interest notes. The payment of these interest notes was secured by an independent trust deed upon the same premises as in the case of the trust deed securing the 10 $1,000 bonds. On the day the loan was negotiated I gave the defendant my sight draft on the complainant, payable to defendant's order, for the full amount of the loan, with the accrued interest up to that day, viz., for $10,017.25, which draft I have attached, marked "Exhibit I."

I recognize on the back of this draft the signature of the defendant Sophie Fowler and her husband, E. S. Fowler, showing its payment. At this time the defendant Dr. Fowler was in Chicago, and on the same day I drew my sight draft on him for $210.00 and forwarded the same for collection through the Springfield Savings Bank. This draft is "Exhibit C" in the testimony of Dr. Fowler in this case.

151 I had an agreement with the defendant in this case that on the completion of this loan she was to pay me a commission of $150.00. The difference between the amount of draft and said commission, $60.00, was paid by me at request of said defendant for abstracts of title to the premises, recording and acknowledgment

of papers. These two sums made up the amount of the draft, and was paid to me by the payment of the draft by Dr. Fowler. The complainant had no knowledge of my agreement with the defendant that she should pay me my commission of $150.00, and no part of this money belonged to or was paid to the complainant. In the negotiation of this loan, from its inception to its completion, I had acted as the medium of communication between the complainant and the defendants. I was not authorized nor did I attempt to accept or reject the defendant's application for this loan, but I did recommend its acceptance; nor did I pass on the question of title to real estate in this case, all these matters having been submitted to and decided by the complainant in New York; nor for what I did in connection with this loan was I paid by the complainant anything; nor was I authorized to do anything by the complainant in this case more than I did and as here shown. The draft
152 in this case, "Exhibit I" herein, was delivered by me to John Marvin, in this city, the day of its date, he acting for his daughter, the defendant Sophie Fowler.

Cross-examination:

I had an understanding with the complainant company a short time before this loan was made. This loan and all other loans I made were in pursuance of this understanding. The complainant furnished me with the blank "Exhibit G" in this case and blank "Exhibit H," and gave me instructions as to how they should be filled up, which I accordingly followed in filling up such blanks. When I procured an application in this way I forwarded same to the company for their consideration, acceptance, or rejection. In my indorsement on this application recommending the loan, in signing my name as agent, I understood myself as agent of the company in this matter. Complainant acted through me in making this loan. In my arrangement with complainant for making these loans it was the understanding that complainant was to pay me nothing whatever for my services, and that I was to procure whatever pay I had from the borrower.

153 "EXHIBIT G."

It will be necessary to give two references in the following blanks as to the pecuniary responsibility of the obligor.

Name: E. L. MEINERT,
Address: *Springfield, Ills.*

Name: —— ——,
Address: ——, ——.

Application to the Equitable Trust Company of New London, Conn.
New York office, 76 Cedar street.

The undersigned applies for a loan secured by deed of trust as follows:

Amount of loan: $12,000 for five years.

Annual rate of interest, payable semi-annually: 9%.
Full name of obligor: Sophie Fowler.
Occupation and present place of business: —.
Full name of husband, if married: Edwin S. Fowler.

Description of property offered as security by lot and block or by metre & bounds.

Location: Fronts on Second St. and bounded by 3d, Cook, & Wright streets; about 340 on 2d St. by 330 on Cook St.
Dimensions of ground: About 340 feet on 2d by 330 on Cook St.
Dimensions of building: 48 by 70 feet.
Building materials: Frame; assessed for taxes of 1875.
Purposes of use: Dwelling.
Value of ground, —; value of building, —; total, —.
Insurance: —. Loan to be used for: —.
Annual rent: —. What mortgages now on premises, and by whom held? None.
Is title a fee simple, unincumbered, except as in last answer? Yes.
Is the street in front paved? No. Flagged? No. Sewered? Yes. Has it gas pipes? Yes. Water pipes? Yes.
Fire insurance policies and renewals to be effected by and premiums paid through a person named by the company to supervise the same.
154
N. B.—The applicant will please specify the above particulars as far as practicable and in all cases sign the application.
Date, Jan. 19, 1876.

SOPHIE FOWLER.

"EXHIBIT H."

Agency of Equitable Trust Company.

SPRINGFIELD, ILL., *Feb.* 8, 1876.

Equitable Trust Company, 52 William St., New York.

GENTLEMEN: We have this day forwarded to you by Am. Ex. 10 bonds of Sophie & E. S. Fowler, Nos. 7233 to 7242, inc., dated February 1, 1876; also 10 interest notes of the same party for $100 each, and to-morrow shall draw on you in favor of Sophie Fowler as per following account:

Par value of bonds	$10,000 00
Add interest, at 9 per cent., from February 1st, 1876, to Feb'y 8th, 1876, being 7 days' interest, computed at 365 days to the year	17 25
Amount of draft	$10,017 25

On this security we have forwarded to the New London office of the company insurance, properly assigned to Jonathan Edwards, trustee, as follows:

Northwestern National,	No. 86--	1,000	Expires Feb. 8, '77.
American of Phila.,	" 11259--	1,000	Jan. 11, '77.
Fire Assoc.,	" 22084--	3,500	" "
Western Assurance, Toronto,	" 22374--	2,000	" "
		$7,500	

Two mortgages to Jonathan Edwards, trustee, securing this loan were filed with the recorder of this (Sangamon) county on the 6th day of February, 1876.

Yours respectfully, R. P. JOHNSTON.

"EXHIBIT I."

$10,017.25. SPRINGFIELD, ILLS., *Feb.* 8, 1876. [Stamp.]

At sight pay to the order of Sophie Fowler ten thousand and seventeen & $\frac{25}{100}$ dollars at New York, value received, and charge to the account of—

R. P. JOHNSTON, *Ag't.*

To the Equitable Trust Co. No. 52 William St., N. Y.

(Endorsed:) Edwin S. Fowler, Sophie Fowler. Pay National Park Bank of New York or order for account of Third Nat'l Bank of Chicago. L. V. Parsons, cashier. The National Park Bank of New York. Paid.

155 *Deposition of Edwin S. Fowler.*

In the Circuit Court of the United States for the Northern District of Illinois.

EQUITABLE TRUST COMPANY *vs.* SOPHIE FOWLER *et al.* } In Chancery.

Testimony taken before John A. Jones, master in chancery of said court, at his office, in the city of Springfield, on the 25th day of June, 1883.

EDWIN S. FOWLER, being first duly sworn, deposes and says: My name is Edwin S. Fowler; am one of the defendants in this case. My wife and I made to Mr. Johnston, agent of the Equitable Trust Company, an application for a loan of ten thousand dollars. The loan was made February 1st, 1876. I presume the application for the loan was made the preceeding January. I think the application was in writing, but that I don't remember. The amount of loan applied for was $10,000.00, the interest to be at nine per cent. for five years. Mr. Johnston informed me that the loan would
156 be made. I was paid the amount of the loan less Mr. Johnston's commission at the time of executing the trust deed and completing the loan, or I may have been paid the full amount

of the loan and then have paid Mr. Johnston his commission of two hundred and ten dollars ($210,00). I had to pay the commission to Mr. Johnston or else I couldn't have got the loan. The loan was closed by giving the trust deed and executing the bonds in this suit. The bond required seven per cent. coupons, and then there were one-hundred-dollar notes every six months given, making up the two per cent. in that way. In that way the nine per cent. was provided for. I have paid all the notes given for the two per cent. and all the coupons. The money was not paid over to me for some days after the first day of February, 1876, and there was an addition of $17.25 made to me on that account and paid me by Mr. Johnston, which was accrued interest from date of the papers to the date of paying me the money. Mr. Elliott and Johnston both informed me Johnston was agent of — company. Before this loan was made Mr. Rockwell, the agent of the company, came here to get some one to act for them here as their agent,
157 and came to me to suggest some one to loan money for them on real estate. I recommended Mr. Johnston and took him down to Mr. Johnston and introduced him, and he was appointed. I had a conversation with Mr. Elliott in New York at the company's office in regard to the compensation Mr. Johnston was to receive for his services as agent in negotiating loans. Mr. Elliott was then vice-president—since president. He said Mr. Johnston's fees were paid entirely by the borrower and that the company paid him nothing. Mr. Johnston told me the same thing. There was an arrangement between me and the company for a reduction of the interest made about the time of the maturity of the loan. The agreement was the interest should be eight per cent. and the loan was to be allowed to run at eight per cent. interest. I have paid interest on this loan since maturity to the amount of $—. The arrangement for reducing the interest after the maturity of the loan was for the purpose of continuing the loan. The continuation of the loan was the consideration for the reduction of the interest.

Note.

158 By agreement of parties the payment of interest on this loan are to be shown by exhibits filed in the Edwin S. Fowler case and the testimony of the witness, E. S. Fowler.

J. A. JONES, *M. C.*

Witness produces statement from complainant, which is herewith filed as a part of his evidence, marked "Exhibit A:" I received this statement in due course of mail and inclosed in following note, marked "Exhibit B," and herewith filed. Statement "Exhibit D," Rose H. Fowler case, and Exhibit B, in E. S. Fowler case, were enclosed in the same note.

Cross-examination:

X Int. 1. In the application you made for the loan on the property in the trust deed in this case, how much money did you try to borrow on it?

Ans. Ten thousand dollars. That is my recollection of it.

X Int. 2. In that application did you not as- for a loan of twelve thousand dollars?

Ans. It is possible. I don't remember.

X Int. 3. If you applied for more than ten thousand dollars, who determined how much the plaintiff would loan?

Ans. I don't remember.

159 X Int. 4. Don't you know that your application for a loan in this case was sent to the complainant in New York for its acceptance, modification, or rejection?

Ans. I don't know what the company's conduct about that was.

X Int. 5. How long after that application was made before you were advised of its acceptance or modification?

Ans. I don't know; and have no record of it.

X Int. 6. Did you submit an abstract of title with the application?

Ans. I think I did, but I am not sure.

X Int. 7. State, if you know, who finally passed on the question of title.

Ans. I don't know.

X Int. 8. When was the trust deed and ten $1,000.00 bonds in this case executed by yourself and wife to the complainant?

Ans. Seventh day of February they were executed, and delivered on the eighth day of February; I think so.

X Int. 9. What amount of money was paid you by the complainant on the execution and delivery of the bonds?

Ans. Mr. Johnston paid me $10,017.25 less $210.00, commissions, or he paid me the whole of it and I paid him the $210.00, commissions; I don't remember which. I think it is probable he paid the whole amount, as I have his draft for $210.00, which I here

160 produce and make the same Exhibit C to this my deposition.

X Int. 10. How were you paid the $10,017.25—in currency, by check, or by draft?

Ans. By check or by draft; I don't remember which.

X Int. 11. Where were you on February 8th, 1876?

Ans. I think I was in Chicago.

X Int. 12. Where was the check or draft paid that was given you?

Ans. I don't know.

X Int. 13. How did you get the check or draft from Mr. Johnston, you being in Chicago and he being in Springfield?

Ans. By mail*ed*—mailed on February 8th and received on February 9th.

X Int. 14. What did you do with that draft when you received it?

Ans. I don't remember.

X Int. 15. When did you negotiate it?

Ans. I expect, immediately; I don't know.

X Int. 16. When did you pay Johnston's draft of $210.00?

Ans. I don't remember. It is marked, I see, February 10th.

X Int. 17. Had you received the draft of $10,017.25 before you paid the Johnston draft?

Ans. I presume I did.

161 X Int. 18. If this loan of $10,000.00 was negotiated at 9 per cent. for 5 years and the bonds here exhibited only stipulate for 7 per cent., how was the remaining two per cent. evidenced?

Ans. By notes of $100.00 ea., due every 6 months.

X Int. 19. How were these notes secured, if they were secured?

Ans. Same as the bond—on the real estate.

X Int. 20. Was there an independent trust deed executed by your wife for that purpose, of even date?

Ans. There was an independent trust deed, of even date, on the same property, and executed for that purpose.

X Int. 21. What was the date and amount of the last payment of interest made by you prior to the maturity of the bonds in this case, and up to what time did that pay the interest on the bonds?

Ans. I think I had paid them all—the interest due September 30, 1879, on all of these loans, the amount $2,057.50, for which I have my check, with their indorsement. $937.50 was the amount due on this loan out of that check, $37.50 of which was compounded at ten per cent.

X Int. 22. What provision, if any, was made in the two per cent. interest notes of which you have spoken for interest thereon after maturity?

162 Ans. Ten per cent. penalty for default. These interest notes call for ten per cent. interest after maturity.

X Int. 23. When did this loan mature?

Ans. February 1st, 1881.

X Int. 24. When did you make the arrangement you have spoken of for reducing the rate of interest on this loan to 8 per cent. after maturity?

Ans. At about the maturity of the loan.

X Int. 25. Was that arrangement made at the same time as the ones you have testified to in the cases of Rose H. and E. S. Fowler, and was it in writing?

Ans. I think not at the same time, and I think it was not made in writing. The only writing I know of is their statement showing the interest at 8 per cent., enclosed in their letter of August 14th.

X Int. 26. What consideration, if any, moved from you to the complainant as a basis for that arrangement?

Ans. The loan was allowed to run; that was the only consideration.

X Int. 27. How long was the loan to run?

Ans. No specified time.

163 X Int. 28. You are asked to state in detail all the terms and conditions of that arrangement and with whom made.

Ans. Eight per cent. semi-annual interest, and the arrangement made with Mr. Elliott.

X Int. 29. From the time the application in this case was made until the execution and delivery of the trust deed and bond and the payment of the money did you see and talk with any officer of the complainant with respect thereto? If so, when, where, and with whom?

Ans. I don't remember that I did.

X Int. 30. Had you before that time been advised by the complainant that Mr. Johnston's commissions were paid by the borrower?

Ans. No; I don't think I had. I don't remember that I was.

X Int. 31. What authority had Mr. Johnston or what arrangement, if any, had been made for the drawing of the $210.00 draft exhibited or for the payment of that sum of money by you to Mr. Johnston, and with whom was such arrangement made?

Ans. I don't know anything about the authority or arrangement until Mr. Elliott told me he got his pay from the borrower, and Mr. Johnston told me the same.

X Int. 32. You got the $10,017.25 before this Johnston
164 draft was paid. Why did you pay the latter?

Ans. I think the two came together in the same letter. I think when I deposited the draft I paid his draft.

X Int. 33. Look at the Johnston draft exhibited in this case and state if the same was not forwarded through a bank of this city for collection and what bank.

Ans. It seems to have gone through the savings bank here and seems to have been paid at the Northwestern Bank, in Chicago, on February 10th. It probable went through the clearing-house, and that would take a day. The draft by mail was the $10,017.25 draft, and the Johnston draft came through the banks.

X Int. 34. If there was no arrangement why did you pay the Johnston draft?

Ans. I agreed to pay Mr. Johnston a commission to get the money. In my answer to X Int. 31 I supposed the authority referred to was that of the company to Johnston.

X Int. 35. What payments were made by you on the principal or interest of this loan after September 30, 1879?

Ans. I paid all the coupons up. I paid them on the three loans, $3,863.95 July 1st, 1881, and $800.00 January 30, 1882.

X Int. 36. What part of the $3,863.95 was paid on this loan?

Ans. I don't know what part of it they applied. They left a discrepancy of $229.00. In company's exhibit of August
165 14th, 1882, marked A in this case, they apportioned of the *of the* $3,863.95 $1,545.58 on this loan, and of the $800.00 payment, January 30, 1882, they apportioned $320.00 on this loan.

X Int. 37. If we assume that on July 1st, 1881, you paid on account of interest on this loan $1,545.58, what part of that sum was for the payment of the interest coupons of the bonds and two per cent. interest notes, maturing February 1st, 1881, and before that date, in this case?

Ans. According to this account, $1,350.00, and such other sums as represent compound interest.

X Int. 38. If any further payments on account of principal or interest on this loan have been made, please state them.

Ans. None since January 30th, 1882.

X Int. 39. Are you not mistaken in saying as you have that an arrangement was made with complainant for reducing the rate of interest on this loan after maturity from nine to eight per cent.?

Ans. I am not mistaken, and Exhibit "A" shows I am not mistaken, and there is a foot-note on Exhibit "A" that interest — to be added @ 8 per cent. to all items, and interest is carried out on account at eight per cent.

X Int. 40. Since the rendering of statement Exhibit "A," what payments, if any, on account of interest on this loan have you made?

Ans. None whatever.

166 "EXHIBIT A." J. A. Jones, M. C.

New York Office, 16 Exchange Place.

NEW YORK, *Aug. 14th*, 1882.

S. & E. S. Fowler in account with the Equitable Trust Company of New London, Conn.

1880.		
Feb. 1.	To 6 mos. interest on loan	450 00
Aug. 1.	" " "	450 00
1881.		
Feb. 1.	" " "	450 00
Aug. 1.	" " "	400 00
1882.		
Feb. 1.	" " "	400 00
Aug. 1.	" " "	400 00
Aug. 1.	" principal of loan	10,000 00

1881.	CR.	
July 1.	By cash	1,545 58
1882.		
Jan. 30.	" "	320 00

Interest to be added @ 8% to all items from their date to date of settlement.

"EXHIBIT B." J. A. Jones, M. C.

Equitable Trust Company, 16 Exchange Place.

NEW YORK, *August 14th*, 1882.

Edwin S. Fowler, Esq., Springfield, Ill.

DEAR SIR: We hand you herewith statements of our account with the R. H. Fowler, S. & E. S. Fowler, and E. S. Fowler loans.

EDWIN S. MARSTON, *Treas'r.*

167 "EXHIBIT C."

$210.00. SPRINGFIELD, ILLS., *Feb.* 8, 1876.

At sight, pay to the order of myself two hundred and ten dollars, at Chicago, Ills., value received, and charge to account of—

R. P. JOHNSTON.

To Dr. E. S. Fowler, Palmer House, Chicago.

(The back of draft has following indorsements:) R. P. Johnston. Pay to the order of J. D. Rumsey & Co. collection for Springfield Savings Bank. T. S. Wood, C.

(Northwestern National Bank. Paid Feb. 10, 1876.)

(Indorsed:) Filed June 25, 1883. J. A. Jones, clerk.

168 *Decree. Entered October* 20, 1884.

EQUITABLE TRUST COMPANY
vs.
SOPHIE FOWLER, EDWIN S. FOWLER, HENRY R. BOND, and ROBERT P. JOHNSTON. } In Chancery.

And now, on this day, this cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, to wit: That by reason of the non-payment of the balance of the principal sum actually received by the defendants Sophie Fowler and Edwin S. Fowler, secured by said mortgage and bonds, and now due, to wit, the sum of five thousand one hundred and twenty-five & $\frac{42}{100}$ dollars ($5,125.42), and the sum of six hundred and fourteen & $\frac{72}{100}$ dollars ($614.72), insurances and taxes paid by the complainant and interest thereon, there is now due and unpaid to the said complainant the sum of five thousand seven hundred and forty & $\frac{14}{100}$ dollars ($5,740.14), and also the costs of this suit, including a reasonable attorney's fee to William L. Gross, and the sum of two hundred
169 eighty-seven dollars ($287.00) is hereby adjudged and decreed to be such reasonable attorney's fee.

It is therefore ordered, adjudged, and decreed that the said Sophie Fowler and Edwin S. Fowler, or some one of said defendants or some one for them, pay to the master in chancery of this court, or cause to be paid, the said sum of five thousand seven hundred and forty & $\frac{14}{100}$ dollars ($5,740.14) and interest thereon from the day of the day of the rendition of this decree at the rate of six per centum per annum, and all the costs in this suit, including said attorney's fee to William L. Gross of two hundred and eighty-seven dollars (287.00), within five days from the rendition of this decree.

It is further ordered, adjudged, and decreed that in default of such payment being made as aforesaid that the master in chancery of this court proceed and sell forthwith the real estate described in and conveyed by the said trust deed, said real estate lying and being in the city of Springfield, in the county of Sangamon and State of Illinois, and described as follows, to wit: Beginning
170 at the point of intersection of the south line of Cook street with the east line of *of* Second street and running thence south on the east line of Second street three hundred and thirty-seven (337) feet to the north line of Wright street; thence east on the north line of Wright street three hundred and fifty-eight (358) feet to the west line of the lands owned by the Chicago, Alton & St. Louis Railroad Company; thence north along the west line of said railroad lands three hundred and forty (340) feet to the south line of Cook street,

and thence west on the south line of Cook street three hundred and fifty-eight (358) feet to the place of beginning, hereby including in this description lot fifty-four (54) of the assessor's subdivision of the northeast quarter of section thirty-three (33) and part of the west half of the northwest quarter of section thirty-four (34), town. sixteen north, of range five west, of the third principal meridian; also including all that portion or tract of land formerly embraced in block (4) four of W. H. Allen's Addition to the city of Springfield and a strip of land twenty-six (26) feet wide adjoining on the
171 east side of said block four (4) and extending from Wright street north the whole length of said block four.

That said master sell said real estate for cash to the highest and best bidder at public vendue, at the front door of the court-room of this court, in the city of Springfield, Illinois, between the hours of 10 o'clock a. m. and sunset of the same day, to wit, at 12 o'clock m.; that he give twenty days' previous notice of the time and place and terms of sale, describing said reale state with reasonabl ecertainty, by advertising in some newspaper published in the city of Springfield, Sangamon county, Illinois, and that said complainant have the right to bid and become the purchaser at said sale; that he sell said real estate subject to redemption; that said master execute to the purchaser or purchasers at said sale a certificate or certificates of purchase in pursuance of the statute laws of the State of Illinois relating to redemption of real estate from sales under execution, certifying and specifying therein the lands purchased by said purchaser or purchasers and the sum or sums paid therefor, or, if
172 purchased by the complainant in said bill, the amount of its bid and the time when the purchaser will be entitled to a deed for such lands, unless the same shall be redeemed according to law by the defendants Sophie Fowler and Edwin G. Fowler, their heirs, assigns, or grantees, within twelve months from the date of said sale and their judgment creditors within three months thereafter paying the purchase-money and interest thereon at the rate of eight per cent. per annum, and that said master in chancery also file in the office of the recorder of Sangamon county, Illinois, a duplicate of such certificate or certificates, duly signed by him.

And the said master, out of the proceeds of such sale, shall retain his fees, disbursements, and commissions on said sale; that he pay all costs of this suit, including said attorney's fee to William L. Gross, and that out of the remainder of said proceeds he pay to the complainant the said sum of five thousand seven hundred forty & $\frac{14}{100}$ dollars ($5,740\frac{14}{100}$), together with interest thereon at the rate of six per centum per annum from the date of this decree to the day of sale, or if such remainder shall be insufficient to pay the whole of said amount and interest as aforesaid, then that he apply
173 said remainder to the extent to which it may reach in satisfaction of said amount and interest, and that in case the said premises shall sell for more than sufficient to pay the principal, interest, and costs, including said attorney's fee to William L. Gross, in the suit, then, after making payment as aforesaid, the master

shall bring the surplus money into court without delay, to abide the further order thereof.

It is further ordered, adjudged, and decreed that the defendants and all persons claiming by, through, and under them or either of them since the commencement of this suit be forever barred and foreclosed from all equity of redemption and claim of, in, and to the said mortgaged premises or any part thereof if the same are not redeemed according to the laws of the State of Illinois in such case provided by the defendants Sophie Fowler and Edwin S. Fowler, their heirs, representatives, and grantees, within twelve months next after the day of such sale and by their judgment creditors within the three months then next thereafter, and that at the expiration of the fifteen months next after the day of said sale, if such mortgaged premises or any portion thereof are not redeemed as
174 aforesaid, then, upon the production to and filing with the master in chancery of this court of the certificate or certificates of purchase executed by the master as aforesaid, — execute and deliver to such purchaser or purchasers, their heirs, representatives, or assigns, good and sufficient conveyance or conveyances in fee simple of said premises or such portion thereof as shall have been sold to such purchaser or purchasers respectively.

And it is further ordered, adjudged, and decreed that upon the execution and delivery of the conveyance or conveyances as aforesaid the said purchaser or purchasers, his, her, or its heirs, representatives, or assigns, be let into possession of the portion of said premises so conveyed to him, it, or them, and that any of the parties in this cause who may be in possession of said premises or any part thereof, and any person who, since the commencement of this suit, has come into possession under them or either of them, on the production of the master's deed of conveyance and a certified copy of the order of this court confirming the report of said sale, shall surrender possession thereof to such purchaser or purchasers, their
175 heirs, representatives, or assigns, and on refusal so to do will be considered in contempt of this court.

And it is further ordered, adjudged, and decreed that if the moneys arising from said sale shall be insufficient to pay the amount so due the complainant, with interest as aforesaid, after deducting the costs, attorney's fee, and expenses of sale as aforesaid, the said master shall specify the amount of such deficiency in his report of said sale, and that on the coming in and confirmation of said report the defendants, Sophie Fowler and Edwin S. Fowler, who are personally liable for the payment of the debt secured by said trust deed, pay to the complainant the amount of such deficiency, with interest thereon from the date of such last-mentioned report, and that the complainant have execution therefor.

And thereupon the complainant enters its motion for a rehearing before a full bench.

176 *Motion for Rehearing.*

In the Circuit Court of the United States for the Southern District of Illinois. June Term, A. D. 1884.

EQUITABLE TRUST COMPANY
vs.
SOPHIE FOWLER *et al.*
} In Chancery.

Now comes the complainant, by its solicitor, and moves the court herein that this cause may be reheard and reargued, and that such rehearing and reargument may be had before the full bench of this court at such time as this court may fix, because it says the questions of law arising in this case are of the gravest importance and have never before been adjudged by this court; that under the ruling of this court, as now expressed, the rights and interests of this complainant corporation, as also the rights and interests of all other non-resident corporations having loans of money secured by mortgage on lands in this State, are or may be seriously effected, and because, in so grave and important a matter, the court itself may well require the fullest research and wisest suggestion of counsel.

W. L. GROSS,
Sol'r for Compl't.

(Endorsed:) Filed October 20, 1884. J. A. Jones, clerk.

And afterwards, on said twentieth day of October, in the year last aforesaid, the complainant, by its solicitor, filed in the clerk's office of said court a petition for rehearing as follows, to wit:

177 *Petition for Rehearing.*

In the United States Circuit Court, Southern District of Illinois.

EQUITABLE TRUST COMPANY
vs.
SOPHIE FOWLER *et al.*
} In Chancery. Foreclosure.

The complainant above named respectfully petitions the court in the above-entitled cause upon the entry of decree that a rehearing thereof be allowed before the full bench, and respectfully shows—

1. That, as the petitioner is advised and believes, the question involved in the decision of the court upon which decree in each case has been entered is novel and wide-reaching and the decision contrary to the prevailing opinion of the bar, on the faith of which very large amounts of money have been invested by complainant and very many corporations.

2. That this question, although, perhaps, suggested by the pleadings, was abandoned upon the first hearing and was raised upon reargument without previous notice to the complainant's counsel.

3. That the argument of *ultra vires* is based upon the laws
178 of the State of Connecticut, and the law of that State is before the court only on judicial notice, guided by what the petitioner is advised and believes to be incomplete and misleading statements of the defendants' counsel, the effect of which in the time allowed and with the facilities at hand it was not feasible for the complainant's counsel to counteract.

4. It seems that the decision was based on the Revised Statutes of Connecticut of the year 1866. The penalty therein provided seems to have been applied herein, and yet the petitioner is advised and believes that the law of 1866 was entirely repealed in 1872 and has never been re-enacted. The law as to interest, which was passed in 1873, the petitioner is advised and believes provides as the only penalty for usury the forfeiture of the excess of interest only, and that only in case of suit brought for the purpose within one year. The petitioner therefore believes that if the law of 1873 was at all before the court the Connecticut construction of that law was not brought to the attention of the court, and it is doubted whether the books of statutes and decisions of Connecticut were within the reach of the court or of the complainant's counsel.

5. The petitioner is advised and believes that later statutes of Connecticut throw light upon the meaning of the statute of 1873, and that these later statutes should also be called to the at-
179 tention of and considered by the court in determining this question.

6. That, as petitioner is advised and believes, in the year 1875 a law was enacted in Connecticut, which has been in force ever since August, 20th, 1875, expressly providing that when the borrower resides or the mortgage security was located in another State where the legal rate of interest was greater than in Connecticut, the lender might accept and recover any agreed rate of interest not exceeding the rate legal in that other State; and yet, as petitioner is advised and believes, this statute was not cited to or considered by the court, although its bearing in these cases is manifest.

7. The petitioner is advised and believes that certain authorities in the United States courts which have important bearing on this case were not brought to the attention of the court.

All of which is respectfully submitted.

EQUITABLE TRUST COMPANY.
W. L. CROSS,
Of Counsel for Petitioner.

(Endorsed:) Filed October 20, 1884. J. A. Jones, clerk.

And afterwards, to wit, on the eight- day of June, in the June term of said court, in the year of our Lord one thousand eight hundred and eighty-five, the following further proceedings were had in said court in said cause, to wit:

180 *Order for Hearing before a Full Bench.*

EQUITABLE TRUST COMPANY
v.
SOPHIE FOWLER *et al.* } In Chancery.

On motion of complainant, by William L. Gross, Esq., its solicitor, this cause is set for hearing on the 29th day of June inst. before a full bench.

Then, afterwards, to wit, on the thirtieth day of June, in the term and year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order Granting Rehearing before a Full Bench.

EQUITABLE TRUST COMPANY
v.
SOPHIE FOWLER *et al.* } In Chancery.

(Entered as of October 31, 1884.)

Ordered that the prayer of the petition heretofore filed in said cause for a rehearing before a full bench be granted, and a rehearing is accordingly ordered; to which order defendants then and there excepted.

181 Afterwards, to wit, on the eleventh day of January, in the year of our Lord one thousand eight hundred and eighty-seven, came again the master in chancery of said court and filed in the clerk's office of said court his supplemental report as follows, to wit:

Supplemental Report of M. C.

In the Circuit Court of the United States for the Southern District of Illinois.

EQUITABLE TRUST CO.
v.
SOPHIE FOWLER *et al.* } In Chancery.

Supplemental report of John A. Jones, master in chancery of said court.

Said master reports that on the 11th day of January, 1887, the following further proofs were produced before him:

That complainant produced before him, as before, 10 real-estate mortgage bonds, dated February 1, 1876, and due February 1, 1881, each for $1,000 00 ---------- 10,000 00

Int. thereon at 10 % after maturity, 5 years 11 months 10 days ---------- 5,944 43

$15,944 43

Cr. on ac. of payments by defendants 1882, January 30	$391 83	
1886, February 2	109 00	
" " 10	147 00	
		647 83

182 W. L. Gross, solicitor for compl't, states on oath that complainant advanced for insurance on property described in the bill the following amounts:

1883, February 15	32 50	
Int. @ 10 %, 3 yrs. 10 mos. 26 ds.	12 70	
1884, February 15	32 50	
Int. @ 10 %, 2 yrs. 10 mos. 26 ds.	9 45	
1885, February 16	32 50	
Int. @ 10 %, 1 yr. 10 mos. 25 ds.	6 20	
1886, February 4	25 00	
Int. @ 10 %, 11 mos. 9 days	2 36	
		153 21

And that the following amounts were advanced by complainant for taxes on premises described in the bill:

1883, May 28	262 33	
Int. 10 %, 3 years 7 mos. 13 ds.	94 88	
1884, June 17	289 77	
Int. 10 %, 2 years 6 mos. 24 ds.	74 34	
1887, January	2,298 73	
		3,020 05
		18,469 86
That a reasonable solicitor's fee is		923 49
		$19,393 35

All which is respectfully submitted.

J. A. JONES,
M. C. U. S. C. C., South. Dist. Ills.

(Indorsed:) Filed January 11, 1887. J. A. Jones, clerk.

183 And afterwards, to wit, on the eleventh day of January, in the January term of said court, in the year of our Lord one thousand eight hundred and eighty-seven, the following further proceedings were had in said court in said cause and entered of record, to wit:

Decree.

EQUITABLE TRUST COMPANY
vs.
SOPHIE FOWLER, EDWIN S. FOWLER, HENRY R. BOND, and ROBERT P. JOHNSTON. } In Chancery.

And now, on this day, this cause again came on to be heard at this term and was argued by counsel, and thereupon, upon consideration

thereof, it was ordered, adjudged, and decreed as follows, to wit: That by reason of the non-payment of the principal and interest secured by said trust deed and bonds, to wit, fifteen thousand two hundred and ninety-six dollars and sixty cents, and the sum of three thousand one hundred seventy-three dollars and twenty-six cents, insurance and taxes and special assessments advanced and paid by the complainant and interest thereon, as stipulated in said
184 trust deed and bonds, there is now due and unpaid to the said complainant the sum of eighteen thousand four hundred sixty-nine dollars and eighty-six cents, and also the costs of this suit, including a reasonable solicitor's fee to William L. Gross, and the sum of nine hundred twenty-three dollars and forty-nine cents is hereby adjudged and decreed to be such reasonable solicitor's fee.

It is therefore ordered, adjudged, and decreed that the said Sophie Fowler and Edwin S. Fowler or some one of said defendants or some one for them pay to the master in chancery of this court or cause to be paid the said sum of eighteen thousand four hundred sixty-nine dollars and eighty-six cents and interest thereon from the day of the date of the rendition of this decree at the rate of six per cent. per annum and all the costs of this suit, including said solicitor's fee to William L. Gross of nine hundred twenty-three dollars and forty-nine cents, within sixty days from the rendition of this decree. It is further ordered, adjudged, and decreed that in default of such payment being made as aforesaid that the master in chancery of this court proceed and sell forthwith the real estate described in and conveyed by the said trust deed, said real estate lying
185 and being in the city of Springfield, in the county of Sangamon and State of Illinois, and described as follows, to wit: Beginning at the point of intersection of the south line of Cook street with the east line of Second street and running thence south on the east line of Second street three hundred thirty-seven (337) feet to the north line of Wright street; thence east on the north line of Wright street three hundred and fifty-eight (358) feet to the west line of the lands owned by the Chicago, Alton and St. Louis Railroad Company; thence north along the west line of said railroad lands three hundred and forty (340) feet to the south line of Cook street, and thence west on the south line of Cook street three hundred and fifty-eight (358) feet to the place of beginning, hereby including in this description lot fifty-four (54) of the assessor's subdivision of the northeast quarter (N. E. ¼) of section thirty-three (33) and part of the west half (W. ½) of the northwest quarter (N. W. ¼) of section thirty-four (34), town. sixteen (16) north, range five west, of the third principal meridian; also including all that portion or tract of land formerly embraced in block four (4) of W. H. Allen's Addition to the city of Springfield and a strip of land twenty-six (26) feet wide adjoining
186 on the east side of said block four (4) and extending from Wright street north the whole length of said block four; that said master sell said real estate for cash to the highest and best bidder, at public vendue, at the north door of the Government building in the city of Springfield, Illinois, between the hours of 10

o'clock a. m. and sunset of the same day, to wit, at 12 o'clock m.; that he give twenty days' previous notice of the time and place and terms of said sale, describing said real estate with reasonable certainty by advertisement in some newspaper published in the city of Springfield, Sangamon county, Illinois, and that said complainant have the right to bid and become the purchaser at said sale; that he sell said real estate subject to redemption; that said master execute to the purchaser or purchasers at said sale certificate or certificates of purchase in pursuance of the statutes of the State of Illinois relating to the redemption of real estate from sales under execution, certifying and specifying therein the lands purchased by said purchaser or purchasers and the sum or sums paid therefor, or, if purchased by the complainant in said bill, the amount of its bid and the time when the purchaser
187 will be entitled to a deed for such lands unless the same shall be redeemed according to law by the defendants Sophie Fowler and Edwin S. Fowler, their heirs, assigns, or grantees, within twelve months from the day of said sale, and their judgment creditors within three months thereafter, paying the purchase-money and interest thereon at the rate of eight per cent. per annum; and that said master in chancery also file in the office of the recorder of Sangamon county, Illinois, a duplicate of such certificate or certificates duly signed by him, and the said master, out of the proceeds of such sale, shall retain his fees, disbursements, and commissions on said sale; that he pay all costs of this suit, including said solicitor's fee to W. L. Gross, and that out of the remainder of said proceeds he pay to the complainant the said sum of eighteen thousand four hundred sixty-nine dollars and eighty-six cents, together with interest thereon at the rate of six per cent. per annum from the date of this decree to the day of sale; or if such remainder shall be insufficient to pay the whole of said amount and the interest as aforesaid, then that he apply said remainder to the extent to which
188 it may reach in satisfaction of such amount and interest; and that in case that the said premises shall sell for more than sufficient to pay the principal, interest, and costs, including said solicitor's fee to W. L. Gross, in this suit, then, after making payment as aforesaid, the master shall bring the surplus money into court without delay to abide the further order thereof; and it is further ordered, adjudged, and decreed that the defendants and all persons claiming by, through, and under them or either of them since the commencement of this suit be forever barred and foreclosed from all equity of redemption and claim of, in, and to said mortgaged premises or any part thereof, if the same are not redeemed, according to the laws of the State of Illinois in such case provided, by the defendants Sophie Fowler and Edwin S. Fowler, their heirs, representatives, and grantees, within twelve months next after the day of such sale, and by their judgment creditors within the three months then next thereafter; and that at the expiration of the fifteen months next after the day of said sale, if such mortgaged premises or any portion thereof are not redeemed as aforesaid,
189 then, upon the production and filing with the master in chancery of this court of the certificate or certifi-

cates of purchase executed by the master as aforesaid, — execute and deliver to such purchaser or purchasers, their heirs, representatives, or assigns, good and sufficient conveyance or conveyances in fee simple of said premises or such portion thereof as shall have been sold to such purchaser or purchasers respectively; and it is further ordered, adjudged, and decreed that upon the execution and delivery of the conveyance or conveyances as aforesaid the said purchaser or purchasers, his, her, or its heirs, representatives, or assigns, be let into possession of the portion of said premises so conveyed to him, her, it, or them, and that any of the parties in this cause who may be in possession of said premises or any part thereof, and any person who, since the commencement of this suit, has come into possession under them or either of them, on the production of the master's deed of conveyance and a certified copy of the order of this court confirming the report of said sale, shall surrender possession thereof to such purchaser or purchasers, their heirs, representatives, or assigns, and on refusal so to do will be considered
189½ in contempt of this court; and it is further ordered, adjudged, and decreed that if the moneys arising from said sale shall be insufficient to pay the amount so due the complainant, with interest as aforesaid, after deducting the costs, solicitor's fee, and expenses of sale as aforesaid, the said master shall specify the amount of such deficiency in his report of said sale, and that on the coming in and confirmation of said report the defendants Sophie Fowler and Edwin S. Fowler, who are personally liable for the payment of the debt secured by said trust deed, pay to the complainant the amount of such deficiency, with interest thereon from the date of such last-mentioned report, and that the complainant have execution therefor, and the said defendants, Sophie Fowler and Edwin S. Fowler, in open court pray an appeal from said decree to the Supreme Court of the United States, said appeal to be a supersedeas, which is granted upon their giving bond within sixty days from the entry of said decree in the sum of five thousand dollars, with security to be approved by one of the judges of this court.

And the said complainant, The Equitable Trust Company,
190 in open court prays an appeal from said decree to the Supreme Court of the United States, which is granted upon its giving bond, within sixty days from the rendition of said decree, in the sum of five hundred dollars, with security to be approved by one of the judges of this court.

Afterwards, to wit, on the twelfth day of March, in the January term of said court and year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order Reducing Penalty of Bond to One Thousand Dollars.

EQUITABLE TRUST COMPANY
vs.
SOPHIE FOWLER *et al.*
} In Chancery.

This cause coming on to be further heard upon the motion of the said defendants, Sophie Fowler and Edwin S. Fowler, by Wilson & Jones, their solicitors, to reduce the amount of the appeal and supersedeas bonds heretofore fixed at five thousand dollars ($5,000.00), and the court having heard the argument of respective counsel thereon, upon due consideration thereof and of the papers filed in support thereof, and the court being fully advised in the premises, doth
191 order, adjudge, and decree that the said motion be granted, and that the amount of said bond be reduced to the sum of one thousand dollars ($1,000.00), the same to operate as a supersedeas.

Afterwards, to wit, on the fifteenth day of March, in the year last aforesaid, came again the defendants Sophie Fowler and Edwin S. Fowler and filed in the clerk's office of said court their appeal bond herein, in the words and figures following, to wit:

Appeal Bond.

Supreme Court of the United States.

EQUITABLE TRUST COMPANY
vs.
SOPHIE FOWLER, EDWIN S. FOWLER, HENRY R. BOND, ROBERT P. JOHNSTON.
} In Chancery.

Know all men by these presents that Sophie Fowler, Edwin S. Fowler, and George N. Black, P. W. Harts, and Dennis Riordan are held and firmly bound unto said complainant, Equitable Trust Company, in the sum of one thousand dollars, to be paid to
192 the said Equitable Trust Company, its successors or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 15th day of March, A. D. 1887.

Whereas the above-named Sophie Fowler and Edwin S. Fowler have prayed an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the southern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named Sophie Fowler and Edwin S. Fowler shall prosecute their said appeal to effect and answer all damages and costs if they

shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

E. S. FOWLER. [L. S.]
SOPHIE FOWLER. [L. S.]
GEO. N. BLACK. [L. S.]
P. W. HARTS. [L. S.]
DENNIS RIORDAN. [L. S.]

Sealed and delivered in the presence of—
BLUFORD WILSON.

Approved March 15th, 1887.

S. H. TREAT.

(Indorsed:) Filed March 15, 1887. J. A. Jones, clerk.

193 UNITED STATES OF AMERICA, *Southern District of Illinois,* } ss:

I, James T. Jones, clerk of the circuit court of the United States in and for the southern district of Illinois, do hereby certify that the foregoing is a true and complete copy of all the papers filed and proceedings thereon had in a certain cause wherein The Equitable Trust Company is complainant and Sophie Fowler, Edwin S. Fowler, Henry R. Bond, and Robert P. Johnston are defendants as truly and completely as the same appear of file and record in my said office.

In testimony whereof I have hereunto set my hand and seal of said court, at Springfield, in said district, this twelfth day of October, in the year of our Lord one thousand eight hundred and eighty-seven, and of our Independence the one hundred and twelfth year.

The Seal of the Circuit Court of the United States, South'n Dist. Ill.

JAMES T. JONES, *Clerk.*

Endorsed on cover: S. Illinois C. C. U. S. No. 324. Sophie Fowler and Edwin S. Fowler, appellants, *vs.* The Equitable Trust Company. Filed February 4, 1888.

Office Supreme Court U. S.
FILED
APR 14 1891
JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States,

OCTOBER TERM, 1890

No. 324.

SOPHIE FOWLER AND EDWIN S. FOWLER, *Appellants*,

v.

EQUITABLE TRUST COMPANY.

Appeal from the Circuit Court of the United States, for the Southern District of Illinois.

BRIEF AND ARGUMENT.

WILLIAM L. GROSS,
Solicitor for Equitable Trust Co.

SPRINGFIELD, ILL.:
H. W. ROKKER, STATE PRINTER AND BINDER.
1891.

Supreme Court of the United States,

OCTOBER TERM, 1890

No. 324.

SOPHIE FOWLER AND EDWIN S. FOWLER, *Appellants*,

v.

EQUITABLE TRUST COMPANY.

Appeal from the Circuit Court of the United States, for the Southern District of Illinois.

BRIEF AND ARGUMENT.

WILLIAM L. GROSS,
Solicitor for Equitable Trust Co.

STATEMENT.

On January 19, 1876, Mrs. Sophie Fowler, wife of Dr. E. S. Fowler, residing at Springfield, Illinois, made written application to the Equitable Trust Company, addressed to it at its New York office, for the loan of $12,000 for 5 years at 9 per cent. semi-annual interest, and tendering as security certain improved property in Springfield, occupied by her as a residence. *Trans. of Rec. pp. 64, 65.*

R. P. Johnston, then a resident of Springfield and engaged in the real estate and loan business, had, prior to the date of Mrs. Fowler's application, been furnished with the blanks used by the Trust Company in making loans and instructed how to

fill them out. He forwarded Mrs. Fowler's application to the Trust Company at New York for its acceptance or rejection.

Except that the amount to be loaned was cut down from $12,000 to $10,000, the terms proposed by Mrs. Fowler were accepted by the Trust Company.

The arrangement was carried into effect by the execution of 10 $1,000 interest coupon bonds, in which interest at 7 per cent. per annum was reserved, evidenced by semi-annual interest coupons attached, and securing the same by a Trust Deed upon the premises described; and the remaining 2 per cent. was evidenced by 10 $100 interest notes falling due at intervals of 6 months, and secured by a separate trust deed upon the same premises.

These trust deeds, bonds, coupons and interest notes all bore date February 1, 1876, were duly executed by Mrs. Fowler and her husband and payable to the Trust Company at New York with interest, *after* maturity, at the rate of 10 per cent. per annum; but formal delivery thereof was not made until February 8, 1876.

On that day Johnston forwarded the bonds and interest notes to the Trust Company at New York, with the following account:

Par value of bonds	$10,000 00
Add. 7 days int. at 9 per cent. (365 d. to the yr)...	17 25
Amount of draft	$10,017 25

—recorded the trust deeds and gave Mrs. Fowler a draft on the Trust Company at New York, payable to her order, for the $10,017.25 so reported, which she accepted, indorsed and collected in full. *Trans. of Rec. pp. 65, 66.*

On the same day the negotiation of loan was closed as above stated, Johnston drew a draft on E. S. Fowler, husband of Sophie Fowler, at Chicago where he then was, payable to himself for $210 and which was paid by the drawee, Feb. 10, 1876. *Trans. of Rec. p. 71.*

Johnston says, (*Tr. Rec. p. 63.*), that he had an agreement with Mrs. Fowler that, on the completion of the loan she would pay him a commission of $150; that the day the loan was closed, he drew his draft on Dr. Fowler, at Chicago, for $210, which was paid; that $150 of this draft was his commission for negotiating the loan, and the remaning $60 was for money

expended by him, at the defendant's request, for abstracts of title, recording and acknowledgments of papers.

In his testimony Dr. Fowler states that he had agreed to pay Johnston a commission to get the money (*Tr. of Rec., p. 70*); that Johnston paid him $10,017.25, "less $210 commissions; or he paid me the whole of it, and I paid him the $210 commissions. Think it probable he paid the whole amount, as I have his draft for $210, which I here produce." Draft marked paid February 10, 1876. *Trans. of Rec., p. 68.*

Fowler testified in June, Johnston in September, 1883. Fowler was not recalled to contradict Johnston as to the amount of the commission, $150, or the consideration for the remaining $60 of the draft.

Respecting his action in connection with this loan Johnston says (*Tr. of Rec., p. 64*), that he acted as the medium of communication between the parties; that he was not authorized and did not attempt to accept or reject the application for loan, but recommended its acceptance; that he did not pass on the question of title to real estate—all these matters being decided by the Trust Company in New York; that the Trust Company paid him nothing for what he did concerning the loan, and had no knowledge of his arrangement with Mrs. Fowler by which she was to pay him a commission of $150 for procuring the loan, and that no part of the $150 belonged to the company or was received by it; and that he was not authorized by the Trust Company to do anything respecting this loan than he did, and as stated. The draft for present worth of the loan he delivered to John Marvin, the father of Mrs. Sophie Fowler.

THE BILL AND ANSWERS.

BILL *to foreclose.* Complainant a Connecticut corporation; principal office in New London; branch office in New York city; citizen of Connecticut. Defendants citizens of Southern District of Illinois; defendant indebted for borrowed money on 10 $1,000 interest coupon bonds, maturing February 1, 1881, with interest *after* maturity at 10 per cent. per annum; principal and interest payable in New York city; to secure which defendants conveyed in fee simple to Jonathan Edwards premises described, *in trust*, to secure the bonds and interest, and subject to defeasance on payment, etc.; upon the death, etc., of trustee, title

to vest in successor trustees named; upon default, trustee to sell premises and apply proceeds in payment of mortgaged debt and interest, costs, reasonable solicitor's fee, not exceeding 5 per cent., and for any payments for taxes, etc., and interest thereon; death of trustee, and refusal of successor trustees to act; default and mortgaged premises forfeited, subject to redemption; sworn answer waived.

Prayer: for account of principal and interest after due, solicitor's fees, insurance and taxes paid, decree for full payment, sale of premises, and process, etc. *Trans. of Rec. pp 2-20.*

Exhibited with the bill was the *second* trust deed, securing the 2 per cent. semi-annual interest notes. *Trans. of Rec. pp. 27-32.*

ANSWERS,—*original answer.* About February 1, 1876, Johnston doing business in Springfield for Trust Company, proposed loaning defendants $10,000 for 5 years at 7 per cent. per annum, which defandants accepted, and executed and delivered the bonds and trust deed to secure the same; bonds usurious in this,—while the bonds aggregate $10,000, defendants only received in consideration thereof, $8,842.71, the balance of the $10,000 being retained and claimed by Johnson as compensation for negotiating the loan, which was a device to conceal usury and avoid the statute; pleads statute of Illinois. Admits complainant is a Connecticut corporation; says by the laws of Connecticut it is forbidden to loan money at greater rate than 7 per cent.; that in conducting the business with defendants it sought to evade the laws of its creation; that it was without power under Connecticut laws to transact the business with defendants; that it was not granted power to loan money at interest in any State other than Connecticut, and could not loan money at interest in Illinois, wherefore bonds are void.

Further, that years before Equitable Life Assurance Co. was organized under New York laws, with office in New York city, to do life insurance business, and in such business accumulated profits and earnings; that said company had no power under its charter to loan money on real estate security; that corporators of said company went to Connecticut and organized complainant corporation, with office in New York city, with intent to loan said profits and earnings upon interest contrary to and in evasion of laws of New York; that the bonds and trust deed

were received by complainant to secure a loan of said profits and earnings furnished by Assurance Company—loan being for benefit of latter company, which had no power to make the loan and receive such security.

Complainant's right to relief denied. *Trans. of Rec. pp. 35-37.*

Amended Answer. — Defendants applied, through Johnston, agent of Trust Company, for a loan of $10,000, for 5 years at 9 per cent. interest, which was accepted; upon making the bonds, it was corruptly agreed that the bonds should be for $10,000, at 7 per cent. interest per annum; that the difference between 7 and 9 per cent. per annum should be evidenced by promissory notes *not* secured by said trust deed and defendants should pay Johnston $210 commissions, which was carried out, and defendants received only the balance of the $10,000; that defendants had paid the 2 per cent. notes; that the trust deed provided, in case of foreclosure in equity, for a solicitor's fee of not exceeding 5 per cent. of sum found due, which, with commissions paid Johnston rendered loan usurious; that the contract of loan is a New York contract, and is by the laws of that State usurious; pleads New York statute. *Trans. of Rec. pp. 42-43.*

POINTS OF DEFENSE AS PLEADED.

1. USURY. (*a*) *Original Answer:* Contract of loaning $10,000 for 5 years, at 7 per cent.; only received thereon $8,842.71, balance, $1,157.29, retained by agent of complainant. (*b*) *Amended Answer:* Contract of loaning $10,000 for 5 years, at 9 per cent.; 7 per cent. reserved in bonds, 2 per cent. evidenced by notes and $210 paid Agent Johnston, and defendants only received the balance, $9,790. (*c*) The 5 per cent. on amount found due provided in such deed as solicitor's fees, with $210 paid Johnston, made contract usurious. (*d*) A New York contract, violative of law of that State.

2. ULTRA VIRES. *Original Answer:* (*a*) Connecticut corporation, without power to loan money in Illinois for more than 7 per cent., or to loan in Illinois at all. (*b*) Funds loaned, the property of Life Assurance Company; loaning by complainant a shift to evade laws of New York.

COMPARISON.

AS TO CONTRACT AND AMOUNTS.

Facts Pleaded.	*Facts shown in Evidence.*
Original Answer.	
Loan applied for, $10,000, 5 years, 7 per cent. interest.	Loan applied for, $12,000, 5 years 9 per cent. interest.
Loan accepted, $10,000, 5 years, 7 per cent. interest.	Loan accepted, $10,000, 5 years, 9 per cent. interest—7 per cent. reserved in bonds and 2 per cent. evidenced by semi-annual interest notes.
Loan effected for 5 years, 7 per cent. reserved in bonds.....$10,000 00 Retained by agent Johnston..... 1,157 29	Loan effected for 5 years, at 9 per cent. interest,—7 per cent. reserved in bonds, 2 per cent. in semi-annual interest notes, secured by separate trust deed..$10,000 00 Interest at 9 per cent. for 7 days added..... 17 25
Received by defendant only..... $8,842 71	Paid to defendant by draft.....$10,017 25
Johnston, complainant's agent.	Johnson, real estate and loan broker—brokerage agreed and paid, $150; deducted from loan, nothing.
Amended Answer.	
Contract of loan, $10,000, 5 years, at 9 per cent. interest.	Contract of loan for 5 years, at 9 per cent. interest—7 per cent. reserved in bonds; 2 per cent. in semi-annual interest notes, secured by separate trust deed.$10,000 00 Interest at 9 per cent. for 7 days added..... 17 25
Loan effected, 5 years, at 9 per cent. interest, 7 per cent. reserved in bonds, 2 per cent. in notes not secured by T. deed ..$10,000 00 Agent's commission..... 210 00	Paid to defendant by draft.....$10,017 25
Received by defendant only..... $9,790 00	Johnston, real estate and loan broker—brokerage agreed and paid, $150; deducted from full amount of loan, nothing.
Johnston, complainant's agent.	Johnston's agreement with defendants as to commissions, unknown to complainant.

Statutes Pleaded.	*Statutes Introduced in Evidence.*
Statutes of Illinois respecting interest and usury.	Taken notice of judicially.
Statutes of Connecticut respecting interest and usury.	(Nothing.)
Statutes of New York respecting interest and usury.	(Nothing.)

ULTRA VIRES.

Facts Pleaded.	*Facts Shown in Evidence.*
Interest laws of Connecticut.	(Nothing.)
Funds loaned, property of Life Assurance Company, loaning a shift to evade laws of New York.	(Nothing.)

ACTION OF THE COURT ON HEARING.

"*The Fowler Cases:*

"Conclusions of the Court:

"1. The complainant, a Connecticut corporation, by its

charter, is authorized to loan money at a rate of interest of 7 per cent, and is prohibited by the law of that State from receiving a greater rate of interest, under the penalty of forfeiting the interest received.

"2. The law of Illinois authorized foreign corporations to transact business in this State; but this permissive legislation must be construed as restricting them to the exercise of the powers conferred by their charter, and not as enlarging their capacity.

"3. The complainant had, therefore, no capacity to make loans of money in Illinois, at a rate of interest exceeding 7 per cent.

"4. The loans in question were 10 per cent loans and beyond the capacity of the corporation to make by its charter.

"5. The complainant is entitled to a decree of foreclosure for the amounts actually advanced to the defendants and costs, but without interest. The decree to bear interest from its rendition.

"6. The payments made by the defendants to Johnston for commissions, are not to be deducted from the amounts advanced by complainant; and any amounts paid by the complainant for taxes on the property mortgaged, to be added to the sums advanced, and interest thereon.

"7. The three cases to be consolidated, and the decree to embrace the subject matter of all of them, with the right of the complainant to an appeal, on a nominal bond in the consolidated case.

S. H. T.

"Decree to be entered as of the 20th October, 1884."

MASTER'S REPORT OF APRIL 2, 1883.

The Master found due for principal and interest after maturity	$12,169 44
Less payments admitted by Trust Company	391 83
	$11,777 61
Insurance paid, and interest thereon	32 90
Solicitor's fee, provided in deed	590 53
Total amount due	$12,401 04

To which report no exception was taken. *Trans. of Rec. p. 41.*

DECREE OF OCTOBER 20, 1884.

Because of non-payment of the balance of the principal sum actually received by the defendant, secured by the mortgage and bonds now due, to-wit, $5,125.42, and $614.72, insurance and taxes paid, and interest thereon, there is now due complainant $5,740.14 and costs, including solicitor's fee of $287.

Orders payment, and on default, sale of premises, etc. *Trans. of Rec. p. 72.*

MOTION AND PETITION FOR REHEARING. BEFORE FULL BENCH.

Filed October 20, 1884. *Trans. of Rec. pp. 75, 76.*

ORDER OF ALLOWANCE, *Nunc Pro Tunc. Trans. of Rec. p. 77.*

ACTION OF COURT ON FINAL HEARING.

"CHICAGO, January 11, 1887.

"*Hon. S. H. Treat, Springfield, Ill.:*

"DEAR JUDGE: I have looked into the cases of the Equitable Trust Company vs. Rose H. Fowler, Same vs. Edwin S. Fowler, and Same vs. Sophie Fowler. While I do not think the defense of usury is sustained in the latter case, namely, the suit against Sophie Fowler, I think the evidence does show that the complainant exacted and received usury in the other two cases. Johnston represented the complainant at Springfield. He was furnished with blank applications, notes, bonds and mortgages, and received instructions how he was to act as the complainant's agent. He was none the less the complainant's agent because of the agreement between him and the complainant by which he was to obtain compensation for his services from borrowers, and charge the complainant nothing for such services. His arrangement with the complainant was, in effect, that he was to do certain things for it, for which he was to be compensated by borrowers, or not at all. It is idle, therefore, to say that in effecting these loans Johnston acted as the agent of the defendants. As the complainant's agent or representative, he sent papers and information to it, with his recommendations for its action. His suggestions and opinions had weight with the complainant, because he was its agent.

"On the assumption, however, that the commissions were matters wholly between the defendants and Johnston, and not proper charges against the complainant, yet, it exacted and received more than 10 per cent. upon the amount actually paid over to Edwin S. and Rose H. Fowler. If the complainant was authorized to retain or discount part of the interest in advance, it was authorized to discount or retain the entire interest in advance, which would lead to a result so palpably unjust that no court could be expected to sustain it. It does not follow that because interest may be thus reserved, or discounted, on short loans, that it can be so reserved on loans for five or ten years.

"I think the complainant is entitled to a foreclosure of the Sophie Fowler mortgage for the amount of principal and interest, and a foreclosure of the other two mortgages for the amounts actually advanced to the defendants, with interest from the date of the decree; not, however, treating the interest paid as credits upon the principal. Will you please have decrees entered in these cases in accordance with the views herein expressed? Perhaps the counsel can make the computations without any reference.

"I go to Madison this evening where I shall be detained ten days or two weeks.

"Yours truly,

[Signed]. "W. Q. GRESHAM."

SUPPLEMENTAL REPORT OF MASTER.

January 11, 1887.

Summary.

Principal of bonds		$10,000 00
Interest after maturity		5,944 43
		$15,944 43
Less payments on account of interest		647 83
		$15,296 60
Insurance paid, and interest thereon	$153 21	
Taxes paid, and interest thereon	3,020 05	
		3,173 26
		$18,469 86
Solicitor's fee		923 49

Trans. of Rec. pp. 77, 78.

Final Decree of January 11, 1887.

Because of non-payment of principal and interest secured by the trust deed and bonds, to wit, $15,296.60, and $3,173.26 insurance and taxes paid, and interest thereon, there is now due to complainant $18,469.86 and costs, including solicitor's fee of $923.49. Payment ordered, and on default sale of premises, etc.

Appeal by both defendant and complainant prayed and allowed. *Trans. Rec. pp. 78-81.*

DECREES COMPARED.

Decree of October 20, 1884.			*Decree of January 11, 1887.*	
Sum actually advanced		$10,017 25	Principal and int. after maturity	$15,296 60
Int. paid to maturity	$1,500 00		Ins. and taxes and interest	3,173 26
Int. paid after maturity	391 83			$18,469 86
		1,891 83	Solicitor's fee	923 49
Balance of principal actually received by defendant		$5,125 42	Amount found and decreed	$19,393 35
Ins. and taxes and interest		614 72		
		$5,740 14		
Solicitor's fee		287 00		
Amount found and decreed		$6,027 14		

CHARTER OF EQUITABLE TRUST COMPANY.

Act of June 19, 1839, General Assembly of Connecticut, incorporating the *Ocean Trust Company*—Name changed to *Equitable Trust Company*.[1]

"§ 1. * * And by that name shall be capable in law to purchase and hold all kinds of property, real, personal, and mixed, and the same at pleasure to lease, hold and convey; to sue and be sued, plead and be impleaded, in all courts; to have and use a common seal, and the same to alter at pleasure; to make and carry into effect all such by-laws and regulations as may be deemed expedient for the proper management of the affairs of the corporation not repugnant to the charter, the laws of this State or the United States, and generally to do and cause to be done and executed all such acts and things as may seem necessary and proper within the limitations aforesaid:[2] Provided, that the office and place of business of said company shall be in the city of New London, etc.

"§ 2. The corporation hereby created shall also have power to receive money in trust and on deposit, and to allow and pay

[1] By act of June 22, 1871. *Trans. of Rec., p. 60.*

[2] *Proviso* added by act July 6, 1870.

interest on said money, *and to loan the same at any rate of interest allowed by law;* may take and receive on deposit or in custody for safe keeping, bonds, plate, jewelry, stocks, and other valuable property, upon such terms and for such compensation as may be agreed upon, etc. (Remaining portion of § 2 and all of § 3, repealed).

"§ 4. It shall be lawful for the corporation hereby created to take and hold any real or personal estate, in trust or otherwise, as security for and in payment of loans and debts due or to become due to the said company, to purchase real estate or any other property at any sale made in virtue of any loan, debt, or mortgage made or held by said company, and to receive or take in satisfaction of any such loan or debt any real estate or other property, and to hold and convey the same at pleasure.

* * * * * * * * * * *

ACT *amending Charter of Equitable Trust Company.*

(May Session, 1872).

§ 1. (Authorizing increase of capital stock).

"§ 2. That said company is hereby authorized to elect ten trustees in addition to the number and in the manner now provided by law, and may have such offices and agencies in other States as may be necessary for the transaction of its legitimate business: *Provided*, That the office, books and records of said company shall be kept at New London, in this State, and be at all times open and subject to the inspection of the bank commissioners.

"§ 3. Said company may take such securities for loans as are now authorized by its charter, in such form, and may sell and dispose of the same in such manner as it may determine, and may guarantee the payment of the principal and interest of such securities. * * *"

Trans. of Rec. pp. 57-61.

INTEREST LAWS OF ILLINOIS.

IN FORCE WHEN CONTRACT WAS MADE.

[*R. S. 1874, Ch. 74, "Interest," pp. 614, 615. In force July 1, 1874.*]

"§ 4. In all written contracts it shall be lawful for the parties to stipulate or agree that ten per cent. per annum, or any less

sum of interest, shall be taken and paid upon every $100 of money loaned or in any manner due and owing from any person or corporation to any other person or corporation in this State.

"§ 5. No person or corporation shall, directly or indirectly, accept or receive, in money, goods, discounts, or thing in action, or in any other way, any greater sum or greater value, for the loan, forbearance or discount of any money, goods or thing in action, than as above prescribed.

"§ 6. If any person or corporation in this State shall contract to receive a greater rate of interest or discount than ten per cent. upon any contract, verbal or written, such person or corporation shall forfeit the whole of said interest so contracted to be received, and shall be entitled only to recover the principal sum due to such person or corporation.

"§ 8. When any bond, bill, draft, acceptance, mortgage, or other contract, shall have been or shall be made in this State, or between the citizens of this State, or a citizen of this State and any other State, territory or country, bearing interest at a rate lawful by the laws of this State, may be made payable in any other State, territory or country, such contract shall be governed by the laws of this State."

"§ 26. Foreign corporations, and the officers and agents thereof, doing business in this State, shall be subject to all the liabilities, restrictions and duties that are or may be imposed upon corporations of like character organized under the general laws of this State, and shall have no other or greater powers. * * " R. S. 1874, Ch. 32, "Corporations," p. 390 § 26.

This section, "by the most direct implication, authorized foreign corporations to acquire real estate in satisfaction of any liability or indebtedness to them."

Columbus Buggy Co. v. *Graves*, 108 Ill., 459.

"That any corporation formed under the laws of any other State or country, and authorized by its charter to invest or loan money, may invest or loan money in this State. And any such corporation that may have invested or lent money as aforesaid, may have the same rights and powers for the recovery thereof, subject to the same penalties for usury, as private persons, citizens of this State; and when a sale is made under any judgment, decree or power in a mortgage or deed, such corporation may purchase, in its corporate name, the property offered for sale, and become vested with the title whenever a natural person might do so in like case. * * " Act April 9, 1875. Starr & Curtis' Stats., p. 628.

This act "was not restrictive but an enabling act, and it did not take away from foreign corporations the power to acquire real estate which was given to them by the General Corporation Act" of 1872.

Columbus Buggy Co. v. *Graves*, 108 Ill., 459.

The loaning of money in Illinois by a foreign corporation, and securing the same upon real estate, is not prohibited by any legislation of the State, and is not contrary to public policy.

Stevens v. *Pratt*, 101 Ill., 206, overruling *Mortgage Co.* v. *Gross*, 93 Ill., 483.

Commercial Union Assurance Co. v. *Scammon*, 102 Ill., 46.

Brown v. *Mortgage Co.*, 110 Ill., top of p. 242.

POINTS AND AUTHORITIES.

I.

CORPORATIONS, EXERCISE OF POWERS IN OTHER STATES.

As to Contracts.

A corporation dwells in the State under whose laws it is created, and such residence creates no insuperable objection to the exercise of its powers of contracting in another State.

The presumption, under the general comity among States, prevails that, unless forbidden by its charter, a corporation may exercise corporate powers in other States unless prohibited therefrom by the public policy of such other State.

Christian Union v. *Yount*, 101 U. S., 352.

Accordingly, in exercising corporate powers extra-territorially, it is for the local sovereignty to prescribe the terms and conditions upon which the presence of a foreign corporation for the conduct of its affairs may be permitted.

St. Louis v. *Ferry Co.*, 11 Wall., 423.

Carroll v. *E. St. Louis*, 67 Ill., 568.

The power to contract existing, it may be exercised by the corporation in the same way as a natural person may contract.

McKiernan v. *Lenzen*, 56 Calif., 61.

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II.

CONTRACTS BY CORPORATIONS IN VIOLATION OR EXCESS OF CHARTER POWERS.

Charter Power: *To Loan Money "At any Rate of Interest Allowed by Law."*

PLEA OF ULTRA VIRES.

In construing the charter of the United States Mortgage Company, organized under the laws of New York, wherein authority was given to lend money on bond and mortgage of real estate situated within the United States, and where the contention was, that the corporation was limited by the rate of interest fixed by the laws of New York, the holding was: "We concur with the Court below in holding this position to be untenable. Reasonably construed, the appellant's charter authorized it to con-

Foreign Corp'ns. loaning money, not contrary to policy of Illinois. Stevens v. Pratt, 101 Ill. 206; affirmed by

tract for such rate of interest as was lawful in the State where the contract of loan was made, and where the property mortgaged to secure the loan was situated. * When New York created the Mortgage Company, with power to loan money upon real estate anywhere within the United States, and prohibited it from lending money at a rate of interest exceeding the legal rate, it did not intend to withhold from it the power to contract in other States for interest upon moneys loaned upon terms less favorable than those States permitted in respect to loans there made by other corporations and by individuals."

United States Mortgage Co. v. *Sperry*, (Feb. 2, 1891) Sup. Court Rep., pp. 321, 328.

Under the doctrine of comity among States, persons or corporations may go into other States and there transact any lawful business, so long as by so doing they do not controvene the policy of such other States.

The policy of the State of Illinois, in respect to contracts between citizens of that State and citizens or corporations of other States, is shown by legislative enactment.

[Chap. 74, "Interest," R. S. 1874, p. 615, § 8.]

"When any bond, bill, draft, acceptance, mortgage, or other contract, shall have been or shall be made in this State, or between citizens of this State, or a citizen of this State and any other State, Territory or country, bearing interest at a rate lawful by the laws of this State, may be made payable in any other State, Territory or country, such contracts shall be governed by the laws of this State." Re-enactment of act of Feb. 12, 1857, 1 Gross' Stats., 1869, p. 371, § 13.

Story on Conflict of Laws, 11 Ed., § 278.

The general rule is, that the plea of *ultra vires* shall not prevail when, instead of advancing justice, it would accomplish a wrong; and it makes no difference, in this respect, whether it is interposed for or against the corporation.

Darst v. *Gale*, 83 Ill., 140.

Alexander v. *Tolleston Club*, 110 Ill., p. 73.

As deducible from a consideration of all the authorities, the rule is thus stated: "After a contract entered into by a corporation has been performed by either of the contracting parties, the fact that the making of the contract involved an un-

authorized exercise of corporate power on the part of the company, will not constitute a defense to an action brought by the party having performed the contract" to enforce its provisions.

2 Morawitz Priv. Corpn., § 689, *et seq.*

Although, in making a contract, the corporation may act in disagreement with its charter, if the question is simply as to its capacity or authority to contract under its charter, a party who has had the benefit of the agreement cannot be permitted, in an action founded on it, to question its validity.

Township of Pine Grove v. *Talcott*, 19 Wall. p. 678.

Sedgwick's Statutory and Constitutional Law, p. 90, and Cases cited.

Germantown, etc., Ins. Co. v. *Dhein*, 43 Wis. 420: 28 Amer. Rep., 549.

Steam Navigation Co. v. *Weed*, 17 Barb., 378.

2 Morawitz Priv. Corpn., § 695, and Cases cited, notes 1, 4. See also §§ 673 and 696*a*, and Cases there cited.

Bishop on Contracts, § 286, Enlarged Edition.

Mutual Life Ins. Co. v. *Wilcox*, 9 Biss., 203.

National Bank v. *Matthews*, 98 U. S., 621.

Gold Mining Co. v. *National Bank*, 96 U. S. 640.

If a corporation "contracts with reference to a subject within its powers, but in so doing exceeds them, the person with whom it deals cannot set up such violation of its franchises to avoid the contract."

Littleworth v. *Davis*, 50 Miss., 403.

Haynes v. *Covington*, 13 S. and M. (Miss.), 411.

Pancoast v. *Travelers Ins. Co.*, 79 Ind., 172.

Commercial Bank v. *Nolan*, 7 How. (Miss.), 508.

Little v. *O'Brien*, 9 Mass., 423.

The execution of a mortgage to a corporation is an admission of the competency of the corporation to enforce its rights thereunder.

Biglow on Estoppel, p. 424, and Cases cited.

Even if the corporation contracted for a greater rate of interest than was provided in its charter, yet, if it did not violate the general usury laws governing the contract, it would not constitute usury.

Lyon v. *State Bank*, 1 Stew. (Ala.), 468.

Commercial Bank v. *Nolan*, 7 How. (Miss.), p. 529.

And see *Newman* v. *Kershaw*, 10 Wis., 333-340.

Although it may be regarded as settled that where a contract is made in one country to be performed in another, the *presumption* is that the parties contracted with reference to the laws of the latter, yet, says the Court, in *Brown* v. *Freeland*, 34 Miss., 181: "The presumption is never to be indulged that the parties intended, in making their contract, to violate the law: and if there be two laws with reference to which they may contract, and the contract accords with one of the laws, it must be presumed that the parties so intended, because they had their election to mould their contract according to either law; and as the law presumes in favor of a contract and not against it, the presumption must be that the parties had in view the law which will give full effect to their contract."

A Pennsylvania banking corporation agreed in that State, with a citizen of New York, to renew his note held by the bank. A renewal note was made, dated, and payable in New York, and mailed to the bank with a check for the amount of the discount—the rate of discount being according to the law of Pennsylvania, but unlawful in New York. *Held,* not usurious in New York.

Wayne County Savings Bank v. *Low*, 81 N. Y., 566; 37 Amer. Rep. 533.

Thompson v. *Edwards*, 85 Ind., 414, was where a resident of that State applied to a resident of New York for a loan. Notes and a mortgage on lands in Indiana were executed in Indiana, and the money paid to the borrower in Indiana,—some of the notes being payable in New York, and others specifying no place of payment. In a proceeding to foreclose it was contended that the contracts were New York contracts, and as they stipulated for a higher rate than the New York rate, they were for that reason usurious. *Held*, that the plain inference from the evidence was that the bonds and mortgage were executed in Indiana and with reference to the laws of that State, and consequently the usury laws of New York had no application as a defense. Citing: Wharton Conflict of Laws, secs. 508–510; *Arnold* v. *Potter*, 22 Iowa 194; *Chapman* v. *Robertson*, 6 Paige 627; *Pine* v. *Smith*, 11 Gray 38; *Bank* v. *Lewis*, 45 Barb. 340; *Levy* v. *Levy*, 78 Pa. St. 507 (21 Am. Rep.

35); *Fitch* v. *Remer*, 1 Biss. 337; *Phila. Loan Co.* v. *Towner*, 13 Conn. 249. Rorer on Inter-state Law, page 48.

And in *Cromwell* v. *County of Sac*, 96 U. S., p. 62, it is said: "Where the rate of interest at the place of contract differs from the rate at the place of payment, the parties may contract for either rate, and the contract will govern." Cases cited.

Followed in *Dugan* v. *Lewis*, Sup. Court of Texas, 14 S. W. Rep., 1024.

IV.

Of the Defense of Usury.

1. *Usury, a Local Question.*

It is the *lex loci contractus* which governs in respect of usury.

De Wolf v. *Johnson*, 10 Wheaton, 383.

Andrews v. *Pond*, 13 Peters 78.

"The question (respecting interest) is one of local law under a statute of a State, and the construction given by its tribunals should conclude us."

Cromwell v. *County of Sac*, 96 U. S. p. 62.

The note, the basis of the suit, which is said to be usurious, having been made in Iowa, the contract must be governed by the laws of Iowa.

Call v. *Palmer*, 116, U. S. 98.

And whether a contract is usurious or not, must be determined by the law in force at the time of its execution.

Latrobe v. *Hulbert*, (U. S. Circuit Court, S. D. of Ohio, Swing, D. J.), 6 Fed. Rep. 209.

2. *Allegata et Probata.*

The rule is general, and without exception, that an averment or plea of usury, must be proved as laid.

Ewing v. *Howard*, 7 Wall. 499, citing *Marvin* v. *Feeter*, 8 Wend. 533.

Holden v. *Pollard*, 4 Peck 173.

Drake v. *Watson*, 4 Day 37.

Wilmot v. *Monson*, *Ibid.* 114.

Brown v. *Mortgage Co.*, 110 Ill. 235.

Kihlholz v. *Wolf*, 103 Ill. 362.

Phillips v. *Roberts*, 90 Ill. 492.
Telford v. *Garrels*, 132 Ill. 550.

When usury is pleaded in an answer in chancery, and the facts and circumstances constituting it specially set forth, evidence proving a usurious contract different from that alleged in the answer, is inadmissible and insufficient.

Bach v. *Fulton Bank*, 3 Wend., 573.

Any variance between the averments of the plea and the proof, as to the *sum* alleged to be usurious, is fatal.

Smith v. *Brush*, 8 Johns., 84.

And if the defendant fails in proving the usurious contract in the way and manner in which he has charged it in his plea or answer, the defense must fail.

Vroom v. *Ditmas*, 4 Paige Ch. 532, citing *Tate* v. *Wellings*, 2 Durn. and East 531.

3. *Intent, an Essential Ingredient.*

If the transaction, says the Court, in *Bank* v. *Owens*, 2 Peters 527, was in violation of the restriction in the bank's charter limiting its power to "take" more than 6 per cent interest, "it could only have been upon the ground of an *intention*" to evade the statute.

So, also: "In construing the usury laws, the uniform construction in England has been, (and it is equally applicable here), that to constitute usury within the prohibitions of the law, there must be an *intention* knowingly to contract for or to take usurious interest; for if neither party intend it, but act bona fide and innocently, the law will not infer a corrupt agreement. Where, indeed, the contract upon its face imports usury, as by an express reservation of more than legal interest, there is no room for presumption; for the intent is apparent, *res ipsa loquitur*. But where the contract, on its face, is for legal interest only, there it must be proved that there was some corrupt agreement or device, or shift, to cover usury; and that it was in the full contemplation of the parties." * * * "The *quo animo* is, therefore, an essential indegredient in all cases of this sort."

Bank v. *Waggener*, 9 Peters, 370.
Hotel Co. v. *Wade*, 97 U. S., p. 23.

The requisites of an usurious transaction are three:

1. A loan;

2. A promise to repay the money lent; and

3. The reservation of a greater rate of interest than is allowed by law.

"The intent with which the act is done is an important ingredient to constitute this offense."

Lloyd v. *Scott*, 4 Peters, 205.

The evidence must show a corrupt, guilty *intent* to evade the law.

Acheson v. *Chase*, (Sup. Ct. Minn., 1 Aug. 1881), Alb. Law, Jour., vol. 24, 378.

And, on the part of the lender, to take more than the legal rate of interest.

Palmer v. *Call*, (Cir. Ct. D. of Iowa), 7 Fed. Rep., 737.

"To constitute the offense of usury there must be an agreement that he who has the use of the money *shall pay to the owner* of it more than lawful interest."

3 Parson's Cont. [6th Ed.], 107.

4. *Commissions by Agent or Broker.*

An *Agent* is defined as one who acts for, or in the place of another, by authority from him; a substitute; a deputy. Webster's Dic.; Bouvier's L. Dic.—*Agent*.

He is bound to execute the orders of his principal, whenever, for a valuable consideration, he has undertaken to perform them. Bouvier—*Duties and Liabilities*. Citing Story's Agency, § 189.

An agent is one who acts for and in the stead of another termed the principal, either generally or in some particular business or thing, and either after his own discretion in full or in part, or under a specific command.

Bishop on Cont., § 1027.

A BROKER, says Webster, is an agent employed to effect bargains and contracts, as a middle man or negotiator, between other persons, for a compensation commonly called brokerage. He takes no possession of the subject matter of the negotiation. See also Rapalje & L. Dic. And a REAL ESTATE BROKER, the same author defines, as one who buys and sells lands, and negotiates loans, etc., upon mortgage. And by Bouvier, as those who negotiate the sale or purchase of real property. In

addition to the above duties they procure loans on mortgage security, attend to leasing and collecting rents, etc. Rapalje & L. Dic.—*Real Estate Broker.*

And Bishop on Contracts, § 1,135, defines a broker as "one who as middle man brings persons together to bargain, or bargains for them in the private purchase or sale of property, not ordinarily in his possession; he has no special property in the goods he may sell, nor, on making a sale has he even implied authority to receive payment."

"An authority to loan money at a legal rate of interest does not include, by implication, the authority to loan it at an illegal rate."

Gokey v. *Knapp*, 44 Iowa 32.

Call v. *Palmer*, 116 U. S. p. 101.

"Brokers negotiating loans of other people's money may charge the borrower commissions without thereby making a loan at the full rate of legal interest usurious." (Citing *Ballenger* v. *Bourland*, 87 Ill., 513; *Phillips* v. *Roberts*, 90 Ill., 492; *Boylson* v. *Bain. Ibid* 283). "*Payne* v. *Newcomb*, 100 Ill., 611, was not intended to decide anything to the contrary, as seems to be supposed by counsel for plaintiff in error."

Hoyt v. *Pawtucket Inst. for Savings*, 110 Ill. 394.

When an agent, authorized to loan money at lawful interest, exacts for his own benefit more than the lawful rate, without the knowledge or authority of his principal, the loan is not thereby rendered usurious. The loaner of the money must not only be a party to the usurious contract, but he must take the usury.

Call v. *Palmer*, 116 U. S., 98.

And when the evidence fails to show that the commission was paid to the loaner, the defense of usury, based thereon, will not be sustained.

Grant v. *Phœnix Life Ins. Co.*, 121 U. S., p. 117.

Agent's commissions, as an element in usury defenses, has often been before the Supreme Court of Illinois:

1. *Ballenger* v. *Bourland*, 87 Ill., 513. There the agent procured a loan and charged a commission and expenses to borrower, but without the lender's knowledge and not for the lender's benefit, and the Court said it was not usury.

2. *Colehour* v. *State Savings*, 90 Ill., 152. There the debtor paid the creditor $1,500, as commission, for procuring another to advance to the debtor the money then due on the creditor's notes, and a year's extension of time. This was held not to constitute usury.

3. *Boylston* v. *Bain*, 90 Ill., 283. There it is *held*, if the principal does not authorize the agent to charge a greater rate of interest than the law allows, and has no knowledge of the agent's doing so, and the principal does not receive the excess above the legal rate, the defense of usury cannot be sustained. And the Court said, in such case, no unlawful and corrupt intent can be imputed the principal. Citing *Condit* v. *Baldwin*, 21 N. Y. 219, where an agent entrusted with money to invest, exacted a bonus for himself as a condition of the loan, without the knowledge of the principal, and it was held no usury.

This case of *Condit* v. *Baldwin*, although by a divided Court and subject to criticism, has been repeatedly sustained and followed and stands unshaken.

Bell v. *Day*, 32 N. Y. 165.
Esteves v. *Purdy*, 66 N. Y. 446.
Guardian Mut. Insurance Co v. *Kashaw*, 66 N. Y. 544.
Van Wyck v. *Walters*, N. Y. Crt. App. June 8, 1880, Alb. L. Jour. Vol. 22, 175.
Call v. *Palmer*, 116, U. S. p. 101.

4. *Phillips* v. *Roberts*, 90 Ill. 492. There it was held, a broker, loaning other people's money, has a right to charge a commission to the borrower, without rendering the contract usurious. See, also, *Jennings* v. *Hunt*, 6 Bradw. 523.

5. *Payne* v. *Newcomb*, 100 Ill., 611. There the loan agent was required to learn the situation of the property offered as security, to examine and ascertain the title, and become personally liable to the lender for any loss sustained through defective title or overvaluation of the security, and the Court found he was the agent of the lender and his taking a commission from the borrower in excess of the legal rate rendered the contract usurious. But in *Hoyt* v. *Pawtucket*, 110 Ill., on p. 394, it is expressly said, that *Payne* v. *Newcomb*, was not intended to decide that a broker loaning the money of others

could not take a commission from the borrower without rendering the loan usurious.

6. *Kihlholz* v. *Wolf*, 103 Ill., 362. The facts in this case as reported in this volume, or in 8 Bradwell, 371, do not clearly appear; but it would seem the lender paid out, at the request of the borrower, some commissions and expenses to persons procuring the loan, and that in that case the contract was not usurious. "That which is paid as commissions and other expenses was paid by decedent (the lender) to other persons at defendant's request. The payments made to third persons to secure the loans were not of the slightest benefit to him." The ruling appears to be based on the fact that the lender only received legal interest, and the case is distinguished from *Payne* v. *Newcomb*.

7. *Meers* v. *Stevens*, 103 Ill., 549. Here the lender loaned his money through his son, who, on a one year loan took 4 per cent commission above legal interest, and at the end of the year, lender referred borrower to another son who extended the loan and took another commission in excess of interest, and the Court found, that the sons were the agents of the father generally, and the contracts usurious, and say, "the circumstances look very much like a family arrangement to charge usury and cover it up under the claim of commissions."

8. *McGovern* v. *Mutual Union Ins. Co.*, 109 Ill., 151. Boon was the agent of the Insurance company and negotiated a loan for his principal of $43,000 for three years at 9 per cent to McGovern, evidenced by the latter's note. He charged McGovern, and the same was deducted in advance, for negotiating the loan, a commission of 3 per cent, $1,290, and this was relied upon as usury. "When this loan was made the legal rate of interest was ten per cent per annum when the contract provided for this amount. The loan in this case was for three years at 9 per cent interest. Now, the 3 per cent commissions only amounted to 1 per cent per annum, so that if the commissions are regarded as interest, and added to the interest at 9 per cent provided for in the note, the rate would still be only 10 per cent, and not usurious."

9. *Hoyt* v. *Pawtucket Institution for Savings*, 110 Ill., 390. Taylor was a loan broker in Chicago. Hoyt made application to the Institution for Savings for a loan of $5,000 at 10

per cent, which being forwarded by Taylor to the Institution, at its residence in Rhode Island, was there accepted, and the loan was paid by the Institution (less $250, one half year's interest, deducted in advance), by a draft to the order of Hoyt himself. Taylor charged Hoyt $250 for commissions for securing the loan, which was paid. This commission, and the agreement therefor, was without the knowledge of the lender, and the Institution got no part thereof, and received no more than 10 per cent on the money loaned, as evidenced by the note given therefor.

The Court held: 1. Taking interest in advance was not usurious; and 2. That the commissions charged by Taylor did not make the transaction usurious, saying: "The Institution for Savings has never received, or agreed to receive, more than the legal rate of interest upon this loan, and whatever in addition thereto Hoyt has paid Taylor, has been in compensation for services of Taylor in procuring the loan for Hoyt, which was something entirely between themselves, independent of the Institution for Savings, with which the latter had no connection. We fail to discover anything of usury in the transaction."

10. *Brown* v. *Mortgage Co.*, 110 Ill., 235. Hale & Co., of Chicago, procured a loan from capitalists in Scotland, for Brown, of $4,500, for 5 years at 9 per cent and the latter gave his note therefor. Brown paid Hale & Co., or the latter deducted from the sum loaned, a commission of $225, and which it was charged, rendered the loan usurious. The evidence, the Court said, did not show Hale & Co. to have been the agents of the lender, adding: "If they were not the company's agents, but were the agents of Brown in that transaction, although he might have paid them an amount which, added to the current interest upon the note, largely exceeded legal interest, it would not prove usury in the loan. It cannot concern the lender what the borrower pays to his own agents. (*Kihlholz* v. *Wolf*, 103 Ill., 362; *Phillips* v. *Roberts*, 90 Ill., 492). The burden of proving a transaction usurious rests upon the party alleging it. (*Boylston* v. *Bain*, 90 Ill., 283; *Kihlholz* v. *Wolf*, *supra*). In the next place, at the time this loan was made (July 15, 1875), it was lawful to exact 10 per cent per annum interest on money loaned. The note given

bears interest only at the rate of 9 per cent per annum, and runs for 5 years. It has been held, and is the well settled law of this Court, that it is not usurious to exact the payment of interest in advance. (*Mitchell* v. *Lyman*, 77 Ill., 525; *Goodrich* v. *Reynolds*, 31 Ill., 490; *McGill* v. *Ware*, 4 Scam. 21). One per cent on $4,500, (the amount borrowed), for 5 years makes just $225; and so in any view, interest has not been exacted beyond the rate of ten per cent per annum—the then legal rate. *McGovern* v. *Union Mut. Life Ins. Co.*, 109 Ill., 151."

11. *Ammondson* v. *Ryan*, 111 Ill., 506. Mrs. Ryan having money to loan, advertised for borrowers. She had previously arranged with Snowhook to refer borrowers to him for his approval of the offered securities,—his charge therefor to be 2½ per cent on the amount of the loan. Ammondson applied directly, and without the aid of Snowhook, to Mrs. Ryan, and procured a loan of $2,000, (time not known), at 10 per cent interest—the highest legal rate. Of the loan the borrower received $1,900, the other $100 being paid to Snowhook, $50 thereof for passing on the abstract of title and drawing up the papers, and $50 for his 2½ per cent. commission. The deduction of the $100 was charged as usurious.

Snowhook's commission of 2½ per cent, says the court, would seem "to have been the proper debt" of Mrs. Ryan, "previously contracted, and the amount previously stipulated for between herself and Snowhook, and the payment of it by the borrower was equivalent to that increased amount of interest being obtained by the lender in addition to the highest legal rate of interest, and so usurious, under the decision of this court in *Payne* v. *Newcomb*, 100 Ill., 611. This is all the usury we discover in the transaction. The payment by the borrower for the examination of the abstract of title and making out the papers, was proper."

12. *Cox* v. *Massachusetts Mutual Life Insurance Co.*, 113 Ill., 382. Tillotson was engaged in the insurance, loan and real estate business, and was the agent of the insurance company, soliciting life insurance therefor, at Bloomington. Cox came to Tillotson's office and applied for a loan of $3,000 (time to run not shown), at 10 per cent interest, on real estate security, and Tillotson sent forward the application to the insurance company for its acceptance or rejection. The application was ac-

cepted, and loan made, the borrower giving his note for $3,000 at 10 per cent interest, then the highest legal rate, and secured the same upon real estate. Tillotson charged Cox a commission of 5 per cent, $150, and retained the same out of the amount of the loan. There was no evidence showing that the insurance company knew of the agreement as to commissions between Tillotson and Cox, and no part of such commission was received by the company, though it did appear that Tillotson had made a number of loans for the company, substantially as this one was made.

In respect of the commissions the court says: "They were a matter solely between Cox and Tillotson, paid by the former to the latter for his benefit alone, under Cox's employment of Tillotson to obtain the loan for him. There is nothing of usury in such a transaction. The fact that an agent, without the authority, consent or knowledge of his principal, upon loaning the money of the latter, exacts from the borrower a sum in excess of lawful interest, does not make the loan usurious. (*Phillips* v. *McKellar*, 92 N. Y., 34; *Palmer* v. *Call*, 7 Fed. Rep., 730; *Ballenger* v. *Bourland*, 87 Ill., 513, and authorities there cited; *Phillips* v. *Roberts*, 90 Ill., 492; *Boylston* v. *Bain*, 90 Ill., 283). *Payne* v. *Newcomb*, 100 Ill., 611, referred to by counsel as favoring a contrary view, is quite another case than the one before us, and does not apply to the facts of the present case."

13. *Haldeman* v. *Massachusetts Mutual Life Insurance Co.*, 120 Ill, 390. "The facts of this case, with the exception of the $100 allowed for attorney's fees, are almost the same as the facts in the case of *Cox* v. *Massachusetts Mut. Life Ins. Co.*, 113 Ill., 382. There a commission of $150 was paid on the original loan, and a commission of $75 for the renewal of the loan, and it was held that there was nothing of usury in the charge and payment of such commissions. The question in this case is whether, under a similar state of facts to that which is stated in the *Cox case*, the payment of the commissions above named of $180 (5 per cent on a $3,600 loan) and $80 (on renewal) constitutes usury. The opinion in the case referred to is decisive of the present case upon the question of usury."

14. *Massachusetts Mut. Life Ins. Co.* v. *Boggs*, 121 Ill., 119. Frisby & Rappleye, of Chicago, were the agents of the insur-

ance company for soliciting insurance, but they also did business as loan agents. Through them Boggs procured two loans from the company, at 10 per cent, the highest legal rate of interest, and paid the agents a commission of 2½ per cent. thereon.

"The facts here," says the Court, "are substantially the same as in *Cox* v. *Massachusetts Mut. Life Ins. Co.*, 113 Ill., 382, where we held that the loan was not usurious, and the ruling there must govern here. * * The insurance company made the loans at 10 per cent interest, which it had a right to do under the law, and if the borrower saw proper to pay a bonus to some outside party to aid in procuring the money, that is a transaction which does not, in any manner, have any bearing on the contract under which the insurance company loaned the money."

15. *Telford* v. *Garrels*, 132 Ill., 550. Telford borrowed of Ryhener & Co. $12,000, giving therefor 12 $1,000 notes, drawing 8 per cent interest, the then highest legal rate, secured on real estate, and paid one Cone a commission of 2 per cent ($240) for getting the money, and this is charged as usury.

"This depends," says the Court, "upon the question whether or not Cone was the agent of Telford in procuring the loan from Ryhener & Co. If appellant employed Cone to get the money, and paid him a commission for so doing, the lenders cannot, for that reason, be charged with usury. The trial court found that Cone was appellant's agent in the premises, and we think that such finding is supported by the evidence. As the appellant alleges usury, the burden was on him to prove it, and it was his duty to establish it by a preponderance of the evidence. He has failed to do so."

16. *Sanford* v. *Kane*, 133 Ill. 199. Kane borrowed of Sanford $500 and gave his note therefor, payable to Sanford in 3 years with 10 per cent interest, that being the highest legal rate, and secured the same on real estate. Eleven months thereafter Sanford assigned to Whittlesey, who, as assignee of the mortgage—not the note, sold under a power, and Sanford became the purchaser. On bill to redeem it appeared that Sanford only paid Kane, at the time the loan was effected, $475, retaining the $25 as commission for procuring the loan from Whittlesey. The Court found the money loaned belonged to Sanford, that he took the

note and mortgage to himself long before the assignment to Whittlesey, controlling the securities and finally becoming the purchaser, and that the transaction was evidently one "not infrequent where a loan is taken at a high rate of interest and subsequently sold to investors of money," and was usurious.

But, says the Court, "undoubtedly a broker, negotiating loans in good faith from others, may charge the borrower commission without rendering the loan, at full rate of legal interest, usurious. *Hoyt* v. *Pawtucket Inst. for Savings*, 110 Ill., 392; *Phillips* v. *Roberts*, 90 *id.*, 492; *Boylston* v. *Bain*, *Ibid*, 283; *Ballinger* v. *Bourland*, 87 *id.*, 513."

17. *Ryan* v. *Sanford*, 133 Ill, 291. Sanford was a loan broker at Morris, Illinois, and received an application for a loan, $650 at 10 per cent, from Ryan, and the latter agreed to pay Sanford 4 per cent commission for his services in getting the money. Sanford sent the application to Trowbridge, at Poughkeepsie, N. Y., who accepted it and sent the $650 to Sanford. The loan was evidenced by the note of Ryan at 10 per cent, secured on real estate, payable to Trowbridge. Sanford deducted his agreed commission, $26, of which Trowbridge had no knowledge, and paid the balance to Ryan, and sent to Trowbridge the note, mortgage (duly recorded) and abstract of title. The taking of the commission was charged to be usury, and in respect thereto the Court says: "The allegation that the transaction out of which the mortgage grew was usurious not only fails of being sustained but is clearly disproved. Trowbridge, the mortgagee, is shown to have advanced out of his own money the entire sum mentioned in the note and mortgage, and the rate of interest agreed to be paid did not exceed the rate at that time allowed by law. If the complainant (Ryan) paid commissions such payments were made to his own agent and are matters of which Trowbridge had no knowledge, and with which he had no concern."

V.

REHEARING.

Entering Orders, etc., Nunc Pro Tunc.

This term, *nunc pro tunc*, is used to denote the doing of a thing at one time which ought to have been performed at another.

The power of the Court over its own records is fully established, and rests upon the soundest principles of justice and equity.

In England, judgments pronounced but not enrolled, were permitted to be enrolled years afterwards, though ordinarily the time was limited to one year.

Lord Mohan's Case, 6 Mod. Rep., p. 59.

Hodges v. *Templer*. Ibid. p. 191.

Blewett v. *Fregonning*, 4 Adolph. & Ellis 1002.

Such action was not indulged where the delay was caused by act of the parties, but only when occasioned by the Court.

Fowler v. *Whadcock*, Barnes' Notes 262.

Chitty's Archibald's Prac. [10th Ed.] p. 1502, [12th Ed.] p. 1572.

Turner v. *London & S. W. Ry. Co.*, 17 L. R. Eq. Cases, p. 566.

As, "where a case stands over for argument from term to term, on account of the multiplicity of business in the court, or for judgment, from the intricacy of the question, the party ought not to be prejudiced by that delay, but should be allowed to enter up his judgment retrospectively, to meet the justice of the case."

Lawrence v. *Hodgson*, 1 Younge & Jervis, p. 372-3.

So, an answer exhibited but not filed, was allowed to be filed *nunc pro tunc*.

Anonymous. 1 Molloy's Repts. (Irish) 462.

And an answer unsworn to be withdrawn, verified and refiled *nunc pro tunc*.

Carter v. *Bosanquet*, 13 Price's Repts., Exchr. 604.

The rule in this country seems to be that the entry of orders, decrees and judgments *nunc pro tunc* does not rest in right, but of favor. Adopting the language of decision:

"It rests in discretion, influenced, in its exercise, by peculiarity of circumstances; and its propriety is not, therefore, to be inquired into by writ of error."

Ley v. *Union Canal*, 5 Watts (Pa.) 104.

In *Insurance Co.* v. *Boon*, 95 U. S., p. 125, the question was, as stated by the Court, "whether the Court could, at the September term, [judgment having been entered at the preceding April term], by an order, correct the record by incorporating

into it, *nunc pro tunc*, a special finding of the facts upon which the judgment had been rendered." And it was said:

"It is familiar doctrine that courts always have jurisdiction over their records to make them conform to what was actually done at the time; and whatever may have been the rule announced in some of the old cases, the modern doctrine is that some orders and amendments may be made at a subsequent term, or directed to be entered and become of record as of a former term. In *Rhoads* v. *Commonwealth*, 35 Penn. St., 276, Gibson, C. J., said: 'The old notion that the record remains in the breast of the Court only till the end of the term, has yielded to necessity, convenience and common sense. Countless instances of amendment after the term, but ostensibly made during it, are to be found in our own books and those of our neighbors'. Even judgments may be corrected in accordance with the truth. It has been held by this Court that, at a subsequent term, when a judgment had before been arrested, an amendment may be made to apply the verdict to a good count, if another be bad, and the minutes of the judge show that the evidence sustained the good one. *Matheson's Adm'r.* v. *Grant's Adm'r.*, 2 How., 282. And this has repeatedly been held elsewhere. Generally, it may be admitted, that judgments cannot be amended after the term at which they were rendered, except as to defects or matters of form; *but every court of record has power to amend its records so as to make them conform to and exhibit the truth.*"

So, in case of bills of exceptions, it has, it seems, always been the practice to allow them to be signed *nunc pro tunc*.

Walton v. *United States*, 9 Wheat., 657.

Turner v. *Yates*, 16 How., p. 29.

If the exception is taken upon the trial, the bill may be signed *nunc pro tunc;* and this is in accordance with the practice of courts of error.

Stanton v. *Embrey*, 93 U. S., p. 556.

Hunnecutt v. *Payton*, 102 U. S., p. 353.

Was the action of the court in directing the order allowing the rehearing before a full bench to be entered as of the time when made, justified?

Upon what state of facts the court based its action of a filing *nunc pro tunc*, is not shown by the record.

In such case the rule is, that a court of review will presume in favor of proceedings in a court having jurisdiction of the parties and subject matter, that justice was administered in the ordinary form.

Stockton v. *Bishop*, 4 How. 167.

Townsend v. *Jimison*, 7 How., p. 719.

And its judgment proper.

Bognell v. *Broderick*, 13 Peters, p. 443.

If the proceeding was not in the ordinary form—if the action of the court in delaying the entry of the formal order was caused by the neglect of the parties, and not occasioned by the court's own act, the party complaining of the court's act should have incorporated the facts in the record, that the reviewing court might see that the course adopted by the court was irregular. In the absence of all showing, the presumption of regularity must prevail. Error will not be presumed, it must be shown.

Kearney v. *Denn*, 15 Wall., p. 56.

If the facts were such as to call into exercise the discretion of the court—and in the absence of a contrary showing, such is the legal presumption, the exercise of such discretion is not subject to review.

Terry v. *Commercial Bank*, 92 U. S., 454.

The action of the court in respect of directing the order allowing rehearing to be filed *nunc pro tunc*, not having been challenged in the trial court by objection, exception, or otherwise, no question is presented for review.

Hamilton County v. *Massachusetts*, 6 Wall., p. 636.

SUMMARY.

The legal principles deducible from the authorities are:

1. Under the general comity among States, a private corporation of one State may exercise corporate powers in the several States, unless (*a*) forbidden so to do by its charter, or (*b*) inhibited by the policy of such other State.

2. Where a corporation has entered into a contract unauthorized by its charter, and the same has been performed, that party receiving the benefit of the contract, will not be permitted

to rely upon the want of corporate power to defeat an action brought to enforce the contract, by the party having performed it.

3. The remedy, as against a corporation for violations of its charter, rests with and can be invoked by the State alone.

4. The execution of a mortgage to a corporation as security for an indebtedness thereto, is an admission of the legal capacity of the corporation to enforce its rights thereunder, and operates as an estoppel to the denial of such power and right.

5. An express grant to a corporation of power to loan money at any rate of interest allowed by law, and to establish agencies in other States for the transaction of its legitimate business, are corporate powers which it may exercise in other States, according to the laws and policy of such other States.

6. The rate of interest or discount which such corporation may legally reserve or take, is the rate prescribed by the laws of the State where the contract is made.

7. The *lex loci contractus* controls in determining the validity, construction and interpretation of contracts.

8. Ordinarily, a contract made in one State, to be performed in another, is presumed to have been made in contemplation of the law of the place of performance; but, in a contract for the payment of money, if valid where made, though invalid at the place of payment, the contract will be referred to that law which will sustain it, as an intention to violate the law will never be presumed.

9. So, a contract in good faith for the loaning of money, wherein or whereon no more than legal interest is reserved or taken by the law of the place of the contract, will be sustained and enforced, though the rate of interest or discount reserved or taken exceed that allowed by the law of the place of payment.

10. And, if such loan be secured by mortgage upon lands situate at the place of the contract, the parties will be presumed to have contracted in respect of such law, although by the law of the place of payment the rate of interest reserved or taken exceeded the legal rate—the fact that the mortgage could be foreclosed, and the fruits of the security realized, alone within the jurisdiction of the *lex loci contractus*, would, in the

absence of a clear showing to the contrary, be conclusive of an intention by the parties that the contract was to be referred to the law of the place where made.

11. Whether or not a contract is usurious, is to be determined by the law of the contract in force at the time of its execution.

12. Usury laws are penal in character and do not operate extra territorially.

13. If the contract is free from usury, according to the law of the contract, this court will adopt the construction and interpretation of the local statutes given by the local tribunals. This being an Illinois contract, its validity is to be tested by Illinois law, and the construction given that law by the courts of Illinois, will here control.

14. The requisites of an usurious transaction are: 1. A loan. 2. A promise to repay the money borrowed. 3. The reservation or taking of a greater rate of interest or discount than is allowed by law, with intent to evade the statute. In other words, there must be an agreement between the lender and the borrower, that the borrower shall pay to the lender more than lawful interest.

15. If the rate of interest reserved in the contract exceeds the legal rate, the intention to evade the statute will thereby sufficiently appear; but if, upon its face, the contract is free from usury, and facts outside the contract are to be resorted to as showing usury, such facts must be pleaded, and proven as pleaded—to succeed, the defendant must establish, by preponderating evidence, the defense set up and relied upon in his plea or answer.

16. The interest and usury laws of Illinois deal alone with the *rate per cent. per annum*, and do not deal with the time nor amounts of loans. What the law forbids, and all it forbids, is "to take, reserve or discount interest," at a rate exceeding 10 per cent per annum.

17. An agent is one who, being thereto authorized, acts in place of, and as a substitute for, his principal, and, within the limit of his authority, binds his principal.

18. A valid contract of agency must be supported by a good or valuable consideration.

19. It is a legal solecism to assume that an agency can exist, where the alleged agent is charged with no duty and incurs no obligation to the supposed principal, and there is no consideration moving between the parties, and where no act is performed by the alleged agent whereby he assumes to bind the supposed principal.

20. A broker is one, who, as middleman, for a consideration paid or agreed to be paid, brings persons together to bargain, or bargains for them, in private property transactions. He does not have possession of the property the subject of bargain, has no right of property therein, nor, in case of sale, has he even implied authority to make or receive payment.

21. By the law of Illinois, the agent of the borrower may contract with and receive from the borrower, a commission, to be reserved out of the sum of the loan, for his services, and the contract of loan is not affected thereby. What the borrower pays his agent, is no concern of the lender.

22. By the same law, the agent of the lender may contract with the borrower and receive from him a commission for services rendered the borrower in procuring the loan, reserving such commission from the sum of the loan, without rendering the contract of loans usurious: *Provided*, (*a*) the lender is without knowledge of the agreement respecting commission, and (*b*) that he neither contracts for nor receives more than the legal interest. In such case, the corrupt intent to evade the statute, or the corrupt act of receiving illegal interest, both essential, concurring ingredients to constitute usury, are wanting.

23. And by the same law, a real estate broker, with or without the knowledge of the lender, may contract with and receive from the borrower, a commission or brokerage for his services in procuring the loan, without thereby rendering the contract of loan usurious.

24. The power of a court of record over its own records, to make them speak the truth, by the entry of orders, judgments, etc., *nunc pro tunc*, inheres in the court, and is an exercise, not of a right demandable by parties, but of a sound, legal discretion, which, in the absence of recitals in the record showing an abuse of discretion, is not the subject of review.

ARGUMENT.

May it please the Court:

A number of questions arise upon this record, all of which, as counsel conceives, may be disposed of without extended argument.

And first, in respect of the power and capacity of the Trust Company to loan money in Illinois.

By its charter the company is authorized to loan its money "at any rate of interest allowed by law," to secure the same upon real estate, and to transact its legitimate business in other States. In effecting loans in the State of Connecticut, the Company is unquestionably limited, as individuals are there limited, to the rate of interest or discount fixed by the laws of that State; but the moment it passes beyond the boundary of that State, by virtue of the comity among States, being authorized in the State of its creation to loan money and secure the same upon real estate, it may exercise the same power in any other State, loaning money at such rate as may be there lawful, and securing the same upon real estate, as by law is there provided, so long as by so doing it does no violence to the policy of such other State. If, before, the question were at all a doubtful one, it would seem that the recent decision and opinion of this Court, by Mr. Justice Harlan, and cited in the Brief, has removed all question.

That the action of the Trust Company in going into Illinois, to find profitable and safe investment for its funds, was not violative of any public policy of that State, is, as counsel think, shown by the legislation of that State, copied in the Statement and referred to in the Brief. Indeed, the books of reports of the Supreme Court of Illinois overflow with cases where the rights of foreign corporations, similar to this Trust Company, have been adjudicated and maintained. And if this were not so, it is within the personal knowledge of the court

and of counsel, that one of the direst calamities in the world's history (Chicago fire) was rendered retrievable, by the influx and investment of the capital of foreign corporations, not unlike this Company, upon the faith of the people and laws of Illinois, and that with the knowledge and tacit consent of the State itself; and experience has shown that that confidence was not misplaced.

But if the Company, by loaning its money upon mortgage in Illinois, at a rate of interest lawful in that State, exercised a power not given it by its charter, still, the law is, that the defendants, having enjoyed the benefits of such contract, cannot be heard in equity in denial of the Company's right and power to enforce its security. And the law is, also, that by executing the mortgage the defendants admitted the legal capacity of the Company to enforce its provisions, and are estopped from asserting the contrary. The remedy for violations of charter powers, rests with and can be invoked only by the State, whose grant of franchise has been thus disregarded.

The doctrine announced in *Darst* v. *Gale*, 83 Ill., on page 140, seems, to counsel, the consensus of authority. It is there said: "The general rule is, that the plea of *ultra vires* shall not prevail when, instead of advancing justice, it would accomplish a wrong; and it makes no difference, in this respect, whether it is interposed for or against the corporation." Here the defendants received of the Company the full sum of the loan, $10,000, and in return therefor executed their obligations to the Company for that amount, securing the same upon lands in Illinois, and for the forbearance of such loan contracting to pay a rate of interest legal at the time and place of the contract. Under such circumstances, to permit the defendants to set up as a defense against the repayment of this loan, a supposed or real want of capacity in the Company to make the contract, would be a travesty upon justice. The money loaned was the property of the stockholders of the corporation, confided to the directors and corporate agents of the Company to be loaned at interest; and, the contract in its nature not being immoral, a court of equity would protect the rights of the innocent stockholders, working out their equities through the

corporation, against the unjust and inequitable claim of the debtor and compel him to observe the scriptural injunction, "Pay that thou owest."

But the contract here is said to be usurious. It was first said, in the original answer, that while the loan was of $10,000 for 5 years at 7 per cent per annum, the sum of $1,157.29 was kept out and retained by an agent of the Company, so that the defendants only received, as the consideration of their securities, the balance, namely, $8,842.71; but, in the amended answer, the charge is, that while the contract of loan was for $10,000 for 5 years at 9 per cent per annum, in executing the securities, 7 per cent of this interest was reserved in the bonds, while the remaining 2 per cent was reserved in and evidenced by interest notes, not secured by the trust deed sought to be foreclosed, and that the defendants had paid an agent of the Company a commission of $210, so that they received in consideration of their securities only the balance, namely, $9,790; and that the contract was rendered usurious, by the stipulation in the trust deed for a solicitor's fee not exceeding 5 per cent of the amount found due, and the payment of the $210 commission to agent.

Usury is a technical defence, resting alone upon the statute; and by the law of Illinois it is provided, that

"The defense of usury shall not be allowed in any suit, unless the person relying upon such defense shall set up the same by plea, or file in the cause a notice in writing, stating that he intends to defend against the contract sued upon or set-off, on the ground that the contract is usurious." R. S. 1874, Ch. 74, "Interest," p. 615, § 7.

This statute is but declaratory of the common law. Anciently, the contract averred to be usurious, must have been correctly and truly pleaded, "so as to meet the evidence, as is necessary in other cases of contract, otherwise the variance will be fatal." (1 Saunders' Reps. 295 *n* 1); and by the plea it must have been shown "how much more than legal interest was taken." Com. Dig. Pleader (2 W. 23).

From the earliest time, in Illinois, where usury was relied upon as a defense, the facts constituting the usury must have been shown by the pleadings, or the question could not arise, (*Murray* v. *Crocker*, 1 Scam. 212); and to maintain such defense, the

burden is upon the defendant to sustain and establish the facts pleaded by a preponderance of the evidence. (*Brown* v. *Mortgage Co.*, 110 Ill. 235). And the same rule in this regard prevails in chancery as at law. *Crane* v. *Homeopathic Mut. Life Ins. Co.*, 27 N. J. Eq. 484; *Stark* v. *Sperry*, 2 Tenn. Ch. 304; *Hannas* v. *Hawk*, 24 N. J. Eq. 124.

In *Mosier* v. *Norton*, 83 Ill., on page 521, the rule is announced: "The uniform practice requires the usurious contract must be proved as stated. The rule is the same in chancery as at law. Such defense is regarded as in the nature of a penal action, and not only is great strictness required in the pleading, but the contract must be proved as alleged." What was said in the *Mosier case* above was held to apply "to the substance and not the form of the plea, such as time, dates, places, sums, etc.," and that it announced "the true rule that the *quantum* of evidence must be the same in both forums." *Jenkins* v. *Greenbaum*, 95 Ill. on p. 22.

That the same rule respecting the technical character of the defense and the nature and extent of the proof required to sustain it, prevails in this Court, is shown by the case of *Ewing* v. *Howard*, 7 Wall. p. 505; and its universality, by the cases cited in the Brief.

In respect of this defense it must then be said, that it is not sustained by the evidence.

There was fatal variance between the facts pleaded and the evidence in respect, 1. Of the amount of usury alleged to have been taken. The material fact pleaded (amended answer) is, that while the loan contracted for was $10,000, at 9 per cent, the Company withheld therefrom, as agent's commissions, $210., and defendants only received in consideration of their securities $9,790; whereas the proof is that the whole sum contracted to be loaned, $10,000, (and in addition, $17.25 accrued interest) was paid by the Company to the defendants and received by them, and no deduction therefrom on any account was made. And

2. In respect of Johnston being the agent of the Company.

Johnston was a loan broker, employed by the defendants to procure for them this loan. He was not the agent of the Company for making loans, never had or controlled any money of the Company for the purpose of loaning, and never did, under any

employment whatever, as agent or otherwise, either enter into a contract of loan on behalf of the Company or assume to do so. The proposition of the defendants, prepared and forwarded by Johnston under an employment with the defendants, was sent to the Company at New York and there considered and accepted, and with such acceptance—the act of contracting—Johnston had no part nor lot.

But if he had been the duly accredited agent of the Company, and, acting under a sufficient contract of agency, had in fact entered into this contract of loan, *non constat* the contract of loaning is usurious.

The fact is, that before treaty began in respect to this loaning, the defendants agreed with Johnston to pay him, if the loan was secured and when consummated, a commission of $150; and this agreement, the evidence clearly shows, was unknown to the Trust Company. In consummating the loan, Johnston advanced and paid out, under the direction of the defendants, "for abstracts of title to the premises, recording and acknowledgment of papers," $60, and when the loan was completed and the whole sum agreed to be loaned, (with 10 per cent interest thereon for 7 days), had been received by the defendants, Johnston drew his draft on Dr. Fowler, then in Chicago, for the sum of his earned commission, and his advances, $210, which two days afterwards was paid by the drawee; and this money, the evidence shows, belonged to Johnston, and no part of it was received by the Company.

The payment to Johnston of the $60 for abstracts, etc., did not render the contract of loaning usurious, as was expressly held in *Ammondson* v. *Ryan*, 111 Ill., 506, and *Kihlholz* v. *Wolf*, 103 Ill., 362.

And as to the $150 commission paid, the loan being at 9 per cent when 10 per cent was legal, and as the commission did not exceed 1 per cent of $10,000 for the five years the loan had to run, the contract of loaning was unaffected, and the case falls within the express holding in *McGovern* v. *Mut. Union Ins. Co.*, 109 Ill., 151, and *Brown* v. *Mortgage Co.*, 110 Ill., 235.

Furthermore, if Johnston was the agent of the defendants, under a contract of employment to assist them in procuring this loan, as the evidence clearly shows he was, or if he was a

broker, loaning the money of the company, then, in either case, upon the authority of *Hoyt* v. *Pawtucket Inst. for Savings*, 110 Ill., 394, and other cases cited in the brief, the payment by the borrower of commissions to such agent or broker for his services in connection with the loan, did not invalidate the contract. And the language used by the Court in that case, with a substitution of names, exactly meets the case at bar. The Court said: "The Institution for Savings has never received or agreed to receive, more than the legal rate of interest upon this loan, and whatever in addition thereto Hoyt has paid Taylor, has been in compensation for services of Taylor in procuring the loan for Hoyt, which was something entirely between themselves, independent of the Institution for Savings, with which the latter had no connection. We fail to discover anything of usury in the transaction."

And by a like substitution of names, the language of the Court in *Brown* v. *Mortgage Co.*, 110 Ill., 235, is equally apt and decisive: "If they were not the Company's agents, but were the agents of Brown, in that transaction, although he might have paid them an amount which, added to the current interest upon the note, largely exceeded legal interest, it would not prove usury in the loan. *It cannot concern the lender what the borrower pays to his own agents.*"

This being so, the charge of usury rests alone upon the fact of the stipulation in the trust deed that, in case of foreclosure, a solicitor's fee of not exceeding 5 per cent of the amount found due, might be taxed as costs in the case. The settled rule in Illinois is, that a loan of money at the highest legal rate, secured by a mortgage, is not usurious because of a stipulation in the mortgage that a solicitor's fee may be taxed as costs in case of foreclosure. *Haldeman* v. *Massachusetts Mut. Union Life Ins. Co.*, 120 Ill., 390; *Dunn* v. *Rogers*, 43 Ill., 260; *Clawson* v. *Munson*, 55 Ill., 394.

This contract having been made in Illinois, by residents thereof, and secured upon lands in that State, will be controlled by the laws of Illinois. The rule is, that the question of usury is one of local law, under a statute of a State, and the construction given the statute by the tribunals of such State, are accepted as conclusive upon this Court.

The rule in respect to solicitor's fees stipulated for in a mortgage, is different in different States. In Michigan, for instance, it is forbidden by statute and the decisions of her Supreme Court. In a case arising under the Michigan statute, and coming to this Court from the United States Court, western district of Michigan, (*Bendey Townsend*, 109 U. S., 665) the holdings of the Supreme Court of Michigan were followed, reversing a decree of foreclosure upon that express ground, and it was said: "Upon such a question, affecting the validity and effect of a contract made and to be performed in Michigan, concerning land in Michigan, the law of the State must govern in proceedings to enforce the contract in a federal court held within the State." There this court felt bound to condemn the contract for fees, because inhibited by the law of the contract; and upon the same principle, the contract will here be sustained because the stipulation is valid by the law of the contract.

Reliance was also placed upon the interest and usury laws of New York, upon the ground, that as the bonds were made payable in the City of New York, the validity, construction and interpretation of the contract of loaning depended upon the laws of New York; and that, as the legal rate of interest by the law of New York was less than the rate reserved in this case, therefore the contract was usurious.

The question of the power and capacity of this corporation to contract for the loaning of money in Illinois, has been considered; but it is now to be determined whether this contract of loaning is dependant for its validity, construction and interpretation, upon the laws of Illinois or New York.

The doctrine announced by this Court in *Cromwell* v. *County of Sac*, 96 U. S., page 62, is, that "where the rate of interest at the place of contract differs from the rate at the place of payment, the parties may contract for either rate, and the contract will govern," and this doctrine is in full accord with the weight and current of authority, as an examination of the many cases cited in the Brief will disclose.

The *Cromwell Case* is selected simply for perspecuity of statement, not because of novelty. The doctrine is not new, and a most satisfactory formulation thereof is found in the opinion by Mr. Justice Swayne, in the leading case of *Miller* v. *Tiffany*, 1 Wallace, page 310. "The general principle in relation to con-

tracts made in one place to be performed in another is well settled. They are to be governed by the law of the place of performance, and if the interest allowed by the law of the place of performance is higher than that permitted at the place of contract, the parties may stipulate for the higher interest without incurring the penalties of usury. *

"The converse of this proposition is also well settled. If the rate of interest be higher at the place of the contract than at the place of performance, the parties may lawfully contract in that case also for the higher rate. *

"These rules are subject to the qualification that the parties act in good faith, and that the form of the transaction is not adopted to disguise its real character. The validity of the contract is determined by the law of the place where it is entered into. Whether void or valid there it is so everywhere."

And in *Scudder* v. *Union National Bank*, 91 U. S., on page 412, Mr. Justice Hunt, in discussing this question, takes for illustration the identical facts of the case at bar, and says: "If a note, payable in New York, be given in the State of Illinois for money there lent, reserving 10 per cent interest, which is legal in that State, the note is valid, although but 7 per cent interest is allowed by the laws of the former State." Cases cited. And by way of complete statement of the law, it is there added: "Matters bearing upon the execution, the interpretation, and the validity of a contract are determined by the law of the place where the contract is made. Matters connected with its performance are regulated by the law prevailing at the place of performance. Matters respecting the remedy, such as the bringing of suits, admissibility of evidence, Statutes of limitation, depend upon the law of the place where the suit is brought."

No further reference to authority need be indulged here—the cases are fully presented in the Brief.

It therefore follows, that the fact that the bonds were by their terms payable in New York in no way affected their validity, or the validity of the mortgaged security, since the validity of the contract of loaning, and of the security pledged for the payment of the bonds, depended, not upon the law of New York, but upon the law of Illinois. The contract was made in Illinois, the indebtedness created was secured upon Illinois real estate; and

whether or not the contract was valid, and the lien given by the mortgage enforcible, is to be determined by a consideration of the laws of Illinois.

Testing the contract of loaning by the laws of Illinois, and it is found free from the taint of usury. It was legally competent for the parties to contract for the reservation of interest at the rate of 10 per cent per annum—in this case only 9 per cent was reserved for 5 years, though after maturity, the rate was stipulated to be 10 per cent per annum. The fact that 7 per cent for 5 years was evidenced by the interest coupons, while the remaining 2 per cent for 5 years was evidenced by semi-annual interest notes secured by an independent trust deed upon the same premises, in no way affects the question. The interest and usury laws of Illinois deal alone with the *rate* per cent per annum reserved or taken; and so long as the parties to the contract keep their contract within the maximum legal *rate*, it matters not into how many parts it may be broken in form. The substantive fact to be determined, and upon which the validity of the contract rests, is, has the lender *contracted* to receive, or has he in fact *received*, more than 10 per cent per annum for the loan and forbearance of his money, and not, is the contract evidenced by one or more obligations of the borrower. It is not perceived how the fact, that 2 per cent per annum interest upon this loan for 5 years was evidenced by semi-annual interest notes secured by an independent trust deed, enters into the question of the validity of the contract of loaning at all. All those interest notes were paid, as were the interest coupons attached to the bonds, before the bill was filed; and by this proceeding it is only sought to recover for the principal sum loaned, $10,000, and interest thereon *after maturity* at the rate stipulated in the bonds, namely, 10 per cent. The uniform rule—that adopted and followed by every court, American or English, is, that where the defense of usury is interposed the court will look to the *substance*, not the *form*, of the transaction. If in substance the contract is valid and within the law, the form of the contract is of no materiality.

The conclusion to be reached, after the most careful examination of the facts of this case in connection with the laws of Illinois, and the decisions of her Supreme Court upon the question of usurious contracts, in the opinion of counsel is, that the

Circuit Court was fully warranted in decreeing, as it did, the payment of the principal sum loaned, with 10 per cent interest thereon after maturity to date of decree; and also, for disbursements by the Company in preservation of the security, with 10 per cent interest thereon; and also, for a solicitor's fee not exceeding 5 per cent of the amount found due, to be taxed as costs, and on default, for the sale of the mortgaged premises, but subject to redemption; and that such decree should now be affirmed.

But it remains for counsel to call the attention of the Court to the position of appellants.

When the District Judge entered the decree of October 20, 1884, based, as it was, upon the position that, as the complainant was a Connecticut corporation, and at home could loan money for no more than at the rate of 7 per cent interest per annum, it was powerless to loan money in Illinois at a greater rate per cent per annum than that limited by the laws of the State of its creation, and therefore this contract was usurious, the Company, on the same day, filed its motion and petition for a rehearing before a full bench, which petition was granted, a rehearing had, and a final decree entered on January 11, 1887.

The position now understood to be assumed by appellants, is, that the action of the Court, in granting a rehearing, was in violation of Rule 88 of this Court, and that the decree of October 20, 1884, is the final decree in this case, from which no appeal or writ of error has been prosecuted or will now lie, the result of which will be the reversal of this decree, to appellant's great advantage.

Of Rule 88 it is unnecessary to speak, further than to say, that the action of the lower court in restoring to its files a presumably lost order, is not the case provided for in the Rule.

Of the fact, as known to counsel, respecting the action of the Court in directing the order allowing the petition for a rehearing to be filed *nunc pro tunc*, he is not permitted to speak; but as lawyer he may say, that as no facts are disclosed in the record showing under what circumstances that order was made, and that the circumstances were not sufficient to justify the act of the Court, the legal presumption will prevail that the action and proceeding of the Court was regular. For the rule is, that only those errors appearing in the record will be considered by a

court of review. Had it been the purpose of the defendants to rely upon a supposed error in the action of the court in this regard, they should have objected thereto at the time, and have preserved their objections and the Court's rulings thereon, in the record. The question cannot be first raised in this Court. *Ewing* v. *Howard*, 7 Wall. p. 505. If parties see fit to lie by while adverse or erroneous action is being taken, without invoking the power of the Court then and there to correct the error, the rule is, that all objection is waived, and that the party has elected to abide the action of the Court. And this rule, of universal application counsel believes, is founded upon obvious principles of justice and common sense. Courts are not thus to be trifled with, nor do the rights of persons, parties litigant, depend upon future caprice.

The authorities in support of the position, so forcibly announced in *Insurance Co.* v. *Boon*, 95 U. S., p. 125, that "courts always have jurisdiction over their records to make them conform to what was actually done at the time" and make them speak the truth; and of the further position, that in the absence of a contrary showing appearing in the record, a court of review will presume in favor of proceedings in a court having jurisdiction of the parties and subject matter, that its proceedings and its administration of justice were in the ordinary form, and its orders and judgments proper; and the further position, that error will not be presumed, but must be shown; and the further position, that the record must show what the action of the Court was in respect to the particular matter, and that such action was challenged by objection or exception, or no question will be presented for review, are all disclosed at some length in the Brief, to which reference is made.

What were the circumstances under which that order was made? Had the original order of allowance been lost from the files? Why did the Court, presided over by most experienced and erudite judges, apparently exceed its authority? What was the duty of the appellants?

The preceding questions are answered by the legal presumption, that the order was made under circumstances justifying it, and the action of the Court formal, regular and proper. The latter question admits of quite as direct answer—it was the duty

of appellants to have objected, and to have preserved the facts and ruling of the Court in the record. Not having done this, the holding must be, as seems to counsel, that the question suggested is not presented, and does not arise upon the record.

Respectfully submitted,

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